88- 1753

Supreme Court, U.S.
FILED
MAR 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1989

No.

S.T., on behalf of her minor child, N.T.,

Appellant

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

Respondents

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

## JURISDICTIONAL STATEMENT

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Date 13 April 1989

57pp

## QUESTIONS PRESENTED

1. Whether the mandating of petitioner's daughter into a drug education class in the Millville Senior High School over her objections, for reasons of conscience, did violate her constitutional right to the free exercise of religion under the First Amendment.

2. Whether the non-federal grounds stated in the decision of the Appellate Divion, New Jersey Superior Court, dated 22 June 1988, were adequate to support the decision.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED . . . . | i |
| TABLE OF CONTENTS . . . . | ii |
| INDEX TO APPENDIX . . . . . | iii |
| TABLE OF AUTHORITIES . . . . | iii |
| JURISDICTIONAL STATEMENT . . . | 1 |
| OPINIONS BELOW . . . . . | 2 |
| JURISDICTION . . . . . | 3 |
| CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED . . | 5 |
| STATEMENT OF THE CASE . . . . . | 8 |
| RAISING THE FEDERAL QUESTION . . . | 8 |
| THE QUESTION IS SUBSTANTIAL . . . | 11 |
| POINT ONE . . . . . | 12 |
| THE MILLVILLE BOARD OF EDUCATION MANDATED APPELLANT'S DAUGHTER INTO A DRUG EDUCATION CLASS OVER HER OBJECTION FOR REASONS OF CONSCIENCE THEREBY VIOLATING HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT | |
| POINT TWO . . . . . | 23 |
| THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE APPELLATE DIVISION, SUPERIOR COURT | |

Page

OF NEW JERSEY BECAUSE THE NON-FEDERAL GROUNDS STATED IN THE DECISION WERE NOT ADEQUATE TO SUPPORT THE DECISION

CONCLUSION . . . . . 28

APPENDIX

A. Order of Supreme Court of New Jersey, dated December 21,1988 29

B. Decision of the Appellate Division .. Superior Court, dated June 22,1988 31

C. Decision of State Board of Education, (excerpts) dated December 3,1986 34

D. Decision of Commissioner of Education, (excerpte) dated February 25,1986 38

E. Decision of Administrative Law Judge, . (excerpts) dated January 16,1986 41

F. Notice of Appeal to the United States . Supreme Court, dated March 17,1989 45

G. Certificate of Service ( Jurisdictional Statement) .47

H. Notice of Appeal to the Supreme Court .. of New Jersey, dated July 7,1988 48

I. Notice of Appeal to Superior Court of . New Jersey, Appellate Division, dated January 8,1987 50

J. Certificate of Service ( Corrected ... Jurisdictional Statement 52

TABLE OF AUTHORITIES


Page

Cases:

Cantwell v. Connecticut, 310 U.S. 296 .. 12
60 S.Ct. 900, 84 L Ed 1213 (1940)

Grausam v. Murphey, 448 F 2d 197 (1970)..16

Sherbert v. Verner, 374 U.S. 398, 10 L ..21
Ed 2d 965,83 S. Ct. 1790 (1963)

Ward v. Love, 253 U.S. 17, 64 L Ed ... 26
751, 40 S. Ct. 419 (1920)

United States Constitution

First Amendment . . . . . 12,24

Statutes

N.J.S.A. 18A:4-28.7 . . . . . 12,15,25

N.J.S.A. 18A:35-4.7 . . . . . 13

N.J.S.A. 18A:40A-1 et seq. . . . . 17,19

Rules

N.J. R. 2:2-1 . . . . . 23

N.J.R. 2:12-9 . . . . . 23

Other Authorities

16 Am Jur 2d . . . . . 16

Holy Bible . . . . . 20,21

In the

# Supreme Court of the United States

October Term, 1989

No.

S.T., on behalf of her
minor child, N.T.,

Appellant

v.

BOARD OF EDUCATION OF
THE CITY OF MILLVILLE
AND WARREN ELLIOTT,
PRINCIPAL OF MILLVILLE
SENIOR HIGH SCHOOL,

Respondents

ON APPEAL FROM THE SUPERIOR COURT
OF NEW JERSEY, APPELLATE DIVISION

## JURISDICTIONAL STATEMENT

Appellant, S.T. appeals from the final decision of the Superior Court of New Jersey ( Appellate Division) dated 22 June 1988,( Appeal to Supreme Court of New Jersey dismissed by Order of 21 December 1988 ) as

violative of her right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

## OPINIONS BELOW

The Order of the Supreme Court of New Jersey, dated 21 December 1988 appears in the Appendix hereto at Appendix A.

The Decision of the Appellate Division of the Superior Court, dated 22 June 1988 appears in the Appendix hereto at Appendix B.

Excerpts of pertinent pages of the State Board of Education, dated 3 December 1986, appears in the Appendix hereto at Appendix C.

Excerpts of pertinent pages of the Decision of the Commissioner of Education, dated 25 February 1986, appears at Appendix D.

Excerpts of pertinent pages of the Initial Decision of the Administrative Law Judge, dated 16 January 1986 appears at Appendix E.

## JURISDICTION

This is an appeal from the non-implementation of a statute ( N.J.S.A. 18A:35-4.7, Parents Right to Conscience Act) by the Millville ( New Jersey) Senior High School, which statute, for reasons of conscience, permits the excusal of a student from the mandated drug education class upon the presentation of a written request from the student's parent or guardian, and in the instant case, the refusal of the principal to honor such request was violative of the First and

Fourteenth Amendment to the United States Constitution whether or not there is a state excusal statute. The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by U.S.C. Sect. 1257 (2). The following decisions sustain such jurisdiction to review: Largent v. Texas, 318 U.S. 418, 63 S.Ct 667, 87 L Ed 873 (1942), Lawrence v. State Tax Commission, 287 U.S. 276, 52 S. Ct 556, 76 L Ed. 1102 (1931).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

First Amendment, United States Constitution states in pertinent Part:

> " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."

Fourteenth Amendment, United States Constitution states in pertinent part:

> " 1. ..... nor shall any state deprive any person of life, liberty,or property without due process of law; ... "

N.J.S.A. 18A:4-28.7 provides that:

> "On and after January 15,1971, each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades."

N.J.S.A. 18A:35-4.7 states:

> " Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom."

Pertinent excerpts from Chapter 40A SUBSTANCE ABUSE (NEW) eff. January 13,1988: N.J.S.A. 18A:40A-1, et seq.

N.J.S.A. 18A:40A-1 states in pertinent part:

> "Instructional programs on the nature of drugs,alcohol and controlled dangerous substances, as defined in... (C. 24:21-2), and their physiological, psychological, sociological and legal effects on the individual, the family and society shall be taught in each public school and in each grade from kindergarten through 12 in a manner adapted to the age and understanding of the pupils. ..... "

N.J.S.A. 18A:40A-2 states in pertinent part:

" The Commissioner of Education, in consultation with the Commissioner of Health shall develop curriculum guidelines for education programs on drugs, alcohol and controlled dangerous substances. ..... "

And in N.J.S.A. 18A:40A-6 :

" The Commissioner of Education, in consultation with the Commissioner of Health shall establish and administer a system for the evaluation of the effectiveness of instructional programs established pursuant to this act. .."

And in N.J.S.A. 18A:40A-8:

"The Legislature finds and declares that:
a. A significant number of young people are unfortunately already involved in the abuse of alcohol and other drugs; ..... "

And in N.J.S.A. 18A:40A-10:

" Each local board of education shall..... , in consultation with the Commissioner of Health establish a comprehensive substance abuse intervention, prevention and treatment referral program in the public elementary and secondary schools of the district. The purpose of the program shall be to identify pupils who are substance abusers, ..... "

## RAISING THE FEDERAL QUESTION

Appellant raised the claim of a violation of the First Amendment to the Constitution in her first pleading to the Administrative Law Judge, dated 12 December 1985 in which Point One of her argument was:

> "THE REFUSAL OF RESPONDENTS TO EXCUSE N.T. FROM THE DRUG EDUCATION CLASS OF THE MILLVILLE SENIOR HIGH SCHOOL IS AN ATTEMPT TO CIRCUMVENT THE INTENT OF N.J.S.A. 18A:35-4.7 AND TO RESTRICT PETITIONER'S RIGHT OF FREE EXERCISE OF RELIGION."
>
> (underline added)

This claim was reiterated throughout the entire course of administrative and court appeals but no decision on the matter was ever forthcoming from the trier of the facts or the appellate tribunals.

## STATEMENT OF THE CASE

This appeal has to do with the constitutional right of appellant, S.T., on behalf of her minor daughter, N.T., to the free exercise of religion in that, N.T. had not

been excused from the eleventh grade drug education class in the health curriculum of the Millville Senior High School for the fall semester of 1985 even though, pursuant to the Parents' Right to Conscience Act ( N.J.S.A. 18A:35-4.7) written requests for excusal were made to respondent principal on three occasions, all of which were denied.

On 4 November 1985 appeal papers were filed with the Commissioner of Education, Saul Cooperman, naming the principal and the Millville Board of Education as respondents. The Initial Decision by A.L.J. Lillard E. Law went against the appellant on the basis that such excusal from the drug education class was not warranted. (App E) Appeal was then made to the Commissioner of Education, who on 25 February 1986 affirmed "... the findings and conclusions of the Initial Decision. ( App D)

Appeal was then made to the State Board of Education which "... reversed the Commissioner's decision" based on the fact that"... we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of statute. .... We further emphasize that our application of N.J.S.A. 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant to the statute."

Respondents appealed to the Superior Court, Appellate Division, which on 22 June 1988, without an opinion, dismissed the appeal as "... moot as to S.T.'s petition respecting N.T." since " N.T. has not been enrolled in Millville schools for several years,..." and "... the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A.

18A: 4-28.7 ( current drug education statute) ... and " The new program is not incorporated into the health education curriculum under the statute,... " (App B)

Appellant appealed this decision to the Supreme Court of New Jersey on the ground that it violated the First Amendment right to the free exercise of religion. The Supreme Court dismissed it on 21 December 1988. ( App A)

THE QUESTION IS SUBSTANTIAL

## ARGUMENT

### POINT ONE

### THE MILLVILLE BOARD OF EDUCATION MANDATED APPELLANT'S DAUGHTER INTO A DRUG EDUCATION CLASS OVER HER OBJECTION FOR REASONS OF CONSCIENCE THEREBY VIOLATING HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT

The Free Exercise Clause of the First Amendment is included in the following excerpt from the United States Constitution:

> " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."

and in Cantwell v. Connecticut, 310 U.S. 296,60 S Ct. 900, 84 L. Ed.1213 (1940) which made the above prohibition applicable to the States, it states at 303:

> " The First Amendment declares that Congress shall make no law respecting an establishment of relion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the States as incompetent as Congress to enact such laws. ..."

The State mandate is based on N.J.S.A. 18A:4-28.7, Drug education unit; secondary

school health curriculum, which states:

> " On and after January 15,1971,each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades."
>
> (underlines added)

The claim to excusal is based on the "Parents' Rights to Conscience Act of 1979" ( N.J.S.A. 18A:35-4.7) which states as follows:

> " Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom."
>
> (underlines added)

Pursuant to the above excusal statute appellant made written request to respond-

ent principal, Warren E. Elliott, for her daughter's excusal, dated 8 October 1985. In one of his answering letters denying such request (15 October 1985) stating:

> " We operate a public high school and as such cannot make your religious standards or ethics the norm. I certainly have considered your daughter's legal rights and simply disagree with you and your attorney as to policy, procedure, and state/federal statutes involved in this case."

Appellant appealed the principal's ruling on the basis that the excusal statute was clear on its face and was enacted later than the one incorporating the drug education class in the health curriculum. The Administrative Law Judge and the Commissioner of Education affirmed the principal relying on the State Senate Committee Statement as to the excusal statute prior to its passage by the legislature. They were reversed by decision of the State Board of Education on the basis of the legal principle of construction in-

volved which forbids any interpretation of a statute that is clear on its face. See Appendix C

Respondents then appealed to the Superior Court, Appellate Division which on 22 June 1988, without an opinion, dismissed the appeal as "... moot as to S.T.'s petition respecting N.T." since " N.T. has not been enrolled in Millville schools for several years,..." and "... the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A. 18A;4-28.7"( current drug education class) and "The new program is not incorporated into the health education curriculum under the statute,..."

Appellant has appealed this decision to the Supreme Court of New Jersey on the ground that it violated her First Amendment right to the free exercise of religion. It was dismissed on 21 December 1988. See Appendix A

It is apparent from these decisions that both Courts omitted to rule on the constitutional issue raised which disregards the usual practice in such a case and flaws the final order. In 16A Am. Jur. 2d at S.446 under Constitutional Law it states:

> " At the same time,in every case where legislative abridgment of fundamental rights is asserted, the courts should be astute to examine the effect of the challenged legislation."

and at S. 458,p.243:

> " In determining the validity of legislation where violation of protected First Amendment freedoms has been alleged, a comprehensive review of the entire record is important to assure that no intrusion upon them has occurred."
>
> (underline added)

And it states in Grausam v. Murphey, 448 F 2d 197 (1970) at 201:

> "(1-3) Where, as in the present case, a violation of protected First Amendment freedoms has been alleged, a comprehensive review of the entire record is important to assure that no intrusion upon them has occurred."

For the above reason, the Appellate Division should have ruled on the constitutional issue presented. Its dismissal of the matter for mootness was error because the appellant's daughter received a failing grade in a class she should have been excused from and still has a vested right in having it expunged from her record. It was additional error for the Court to comment on the fact that "The new program is not incorporated into the health education curriculum..." because, in the face of the constitutional issue raised before it, what the statute says is irrelevant.

Appellant contends further that, even though N.J.S.A. 18A:40A-1, et seq. are presently controlling in the setting up and the implementing of these programs outside of the health curriculum as asserted in the Appellate Division's decision, they cannot avoid conflicting with the provisions of the First Amendment on

grounds of conscience. Whether or not there is a statutory type of excusal from these classes, the mandating of such classes for children of impressionable years over their objection and those of their parents for reasons of conscience is unconstitutional as infringing on the free exercise of religion. The basis of her constitutional argument is that she, as a Christian who believes that the Bible is the inerrant word of God,requested excusal for her daughter, N.T., from the drug education class at the Millville Senior High School. The reason for this request is her belief that the taking of drugs is a sin and contrary to God's Commandments and that the presence of her daughter at such a class might be a source of temptation to her and an occasion of sin. Her explanation of this is that in such a class drugs in general, with all its evil ramifications have to be discussed with

the students and, in her opinion, the surrounding circumstances are such that the classroom atmosphere might have a negative effect on her daughter's spiritual well being. Particularly,it is possible that some of the more worldly students in the class * are already involved with drugs and alcohol and might privately tell her the opposite of what the teacher is standing for. Can the local school board guarantee that this could not happen. There is always spiritual danger where there is propinquity with evil. As so aptly described by the immortal Alexander Pope in his Essay on Man:

> " Vice is a monster of so frightful mien,
> As to be hated needs but to be seen;
> But seen too oft, familiar with her face,
> We first endure,then pity, then embrace."

* It is noticed by the Legislature in one of the statutes just pased (N.J.S.A. 18A: 40A-8) where it states:

> " The Legislature finds and declares that:
> a. A significant number of young people are unfortunately already involved in the abuse of alcohol and other drugs;
> ..... "
>
> (underlines added)

To particularize her reasons of conscience appellant offers the following excerpts from the Bible which she believes that she is bound by and which have impelled her to seek such excusal for her daughter and is the only reason for so doing. They are:

a. From Ecclesiastes XII-13:

"... Fear God,and keep his commandments; for this is the whole duty of man. "

b. From Proverbs XXII-6

"Train up a child in the way he should go; and when he is old, he will not depart from it,"

c. From I Corinthians III-16,17

"Know ye not that ye are the temple of God, and that the Spirit of God dwelleth in you.

If any man defile the temple of God, him shall God destroy: for the temple of God is holy, which temple ye are."

d. From Proverbs XXIII-20,21

"Be not among winebibbers; among riotous eaters of flesh:
For the drunkard and the glutton shall come to poverty:..."

e. From Psalms CI-3,4:

" I will set no wicked thing before mine eyes: I hate the work of them that turn aside; it shall not cleave to me.

A froward heart shall depart from me: I will not know a wicked person."

f. And from Ephesians V-11,12:

" And have no fellowship with the unfruitful works of darkness, but rather reprove them.

For it is a shame even to speak of those things which are done of them in secret."

To further support appellant's position it states in Sherbert v. Verner, 374 U.S. 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963):

"We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation,..."

(underlines added)

In the instant case, since appellant's objectives concerning the mischief to be suppressed coincides with the objectives of the State, it is apparent that, as far as she and her family are concerned, there is no overriding interest of the State which, by granting excusal, would conflict with her position. Therefore, the state interest in denying excusal is so miniscule as to be almost non-existent.

For the above reasons the mandating of appellant's daughter into a drug education class over her objections for reasons of conscience violates her right to the free exercise of religion under the First Amendment.

## POINT TWO

### THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE APPELLATE DIVISION, SUPERIOR COURT OF NEW JERSEY BECAUSE THE NON-FEDERAL GROUNDS STATED IN THE DECISION WERE NOT ADEQUATE TO SUPPORT THE DECISION

The Order of the Supreme Court of New Jersey, dated 21 December 1988, which dismissed the appeal states in pertinent part:

> "...
> ORDERED that the appeal pending in this matter is dismissed pursuant to R.2:12-9."

R.2:12-9 states in pertinent part:

> " Where a party seeks certification to review a final judgment of the Appellate Division and also appeals therefrom, he shall state in the petition for certification all questions he intends to raise on the appeal. .... "

Relative to appeals to the New Jersey Supreme Court from final judgments, the rules governing the Courts of New Jersey state in pertinent part:

> R.2:2-1 (a) As of Right. Appeals may be taken to the Supreme Court from final judgments as of right: 1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or

this State; 2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; ..... "

In this matter appeal had been made to the Supreme Court of New Jersey pursuant to 1) above based on Point Four of the Petition for Certification which stated:

" THE MANDATING OF APPELLANT'S DAUGHTER INTO THE DRUG EDUCATION CLASS IN QUESTION OVER HER OBJECTION FOR REASONS OF CONSCIENCE VIOLATED HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT

The non-federal grounds as asserted in the decision of the Appellate Division were:

1) "... N.T. has not been enrolled in Millville schools for several years, having completed her education in private school. The issues are therefore moot as to S.T.'s petition respecting N.T."

This is error because at the time N.T. was claiming excusal from the class pursuant to the statute in 1985 it was valid as subsequently declared so by the State Board of Education in December 1986. Therefore she

was entitled to excusal at the time and so the matter could not be moot because there was still a vested right claimed by N.T. that had not been resolved; the right to have her failing grade in the drug education class expunged from her record.

2) " Moreover, the Legislature subsequently enacted L.1987, c.387 which repeals N.J.S.A. 18A"4-28.7 and provides for a mandatory comprehensive education program on the nature and effects of drugs, alcohol and controlled dangerous substances. The new program is not incorporated into the health education curriculum under the statute, which has been codified as N.J.S.A. 18A:40A-1 et seq."

(underline added)

Appellant has contended in her Petition for Certification and still does that, even though N.J.S.A. 18A:40 A-1 et seq. are presently controlling in the setting up and implementing of these programs in the government schools without including a section for excusal on grounds of conscience, they cannot avoid conflicting with the provisions of the

First Amendment which were designed to protect the individual citizen from an oppressive government. She further contends that without a carte blanche type of excusal clause to allow for legitimate objections to mandatory attendance for reasons of conscience, such programs are unconstitutional as infringing on the free exercise of religion in that, in this case, they are mandating a child of impressionable years to a class which she believes to be an occasion of sin. In Ward v. Love County, 253 U.S. 17, 64 L ed. 751,40 S Ct 419 (1920), which was a proceeding by 67 Indians to recover moneys alleged to have been coercively collected from them by Love County, Oklahoma, as taxes on their allotments, which under the laws and Constitution of the United States were nontaxable, it states at 22:

> "The right to the exemption was a federal right, and was specially set up and claimed as such

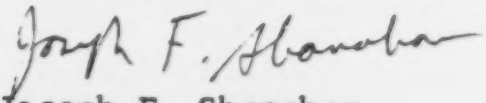
> in the petition. Whether the right was denied, or not given due recognition, by the Supreme Court is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. ..... Of course, if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided."
>
> ( underlines added)

For the above reasons, the grounds stated in the instant decision of the Appellate Division are plainly untenable and insufficient to support the decision and this Court has jurisdiction to review.

## CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



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March 17,1989

( Appendices follow)

Appendix A

SUPREME COURT OF NEW JERSEY
C-526 September Term 1988
29,143

S.T. on behalf of her minor child, N.T.,

Petitioner-Petitioner

v.

THE BOARD OF EDUCATION OF THE CITY OF MILLVILLE, et al.,

Respondents-Respondents

ON PETITION FOR CERTIFICATION

FILED
Supreme Court
Dec. 21,1988
Stephen W. Townsend
Clerk

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-2213-86T7 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal pending in this matter is dismissed pursuant to R.2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 19th day of December 1988.

I hereby certify that the foregoing is a true copy of the original on file in my office

Stephen W. Townsend

Clerk of the Supreme Court
of New Jersey

Stephen W. Townsend
Clerk of the Supreme Court

Appendix B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2213-86T7

RECORD IMPOUNDED

S.T. on behalf of her minor child, N.T.

Petitioner-Respondent

v.

THE BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, and WARREN E. ELLIOTT, Principal, Millville Senior High School

Respondents-Appellants

---

Argued March 15,1988 - Decided Jun 22,1988

Before Judges Antell, R.S. Cohen and Landau.

On appeal from a Final Decision of the State Board of Education.

Frederick A. Jacob argued the cause for appellant Board of Education of the City of Millville ( Jacob & Robinson, attorneys; Mr. Jacob, on the brief).

Arlene Goldfus Lutz, Deputy Attorney General; argued the cause for appellant State Board of Education ( W. Cary Edwards, Attorney General, attorney; Ms Lutz, on the brief).

Joseph F. Shanahan argued the cause for respondent.

PER CURIAM

The Board of Education of the City of Millville and Warren E. Elliott (Elliott), Principal of its senior high school ( collectively Millville) appeal from a final decision of the State Board of Education ( State Board) which granted the petition of S.T. that her daughter N.T. be excused from participation in the Millville 11th grade drug education program adopted pursuant to N.J.S.A. 18A:4-28.7.

N.J.S.A. 18A:4-28.7 provided:

> On and after January 15,1971, each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in Section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades.

The opinion of the State Board was bottomed in a facial interpretation of N.J.S.A. 18A:4-28.7 and N.J.S.A. 18A:35-4.7, the "Parents Right to Conscience Act." N.T. has not been enrolled in Millville schools

for several years, having completed her education in private school. The issues are therefore moot as to S.T's petition respecting N.T. Moreover the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A. 18A:4-28.7 and provides for a mandatory comprehensive education program on the nature and effects of drugs, alcohol and controlled dangerous substances. The new program is not incorporated into the health education curriculum under the statute which has been codified as N.J.S.A. 18A:40A-1 et seq.

It would serve no purpose to consider issues which are both privately mooted and rendered prospectively moot by the new legislation, so that an opinion would offer no useful public guidance.

The appeal is dismissed as moot.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Jack M. Trubenbach
Clerk of Appellate Division

Appendix C

STATE BOARD OF EDUCATION

DECISION (EXCERPTS)

EDU #7052
C # 35-86
SB # 16-86

S.T., on behalf of her minor child, N.T.

PETITIONER-APPELLANT

V.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

RESPONDENTS-RESPONDENTS

---

Decide by the Commissioner of Education, February 25,1986

For the Petitioner-Appellant, Joseph F. Shanahan, Esq.

For the Respondents- Respondents, Jacob & Robinson ( Frederick A. Jacob, Esq.)

This case involves the issue of whether the Parents Rights to Conscience Act of 1979, N.J.S.A. 18A:35-4.6 et seq., applies to a district board's drug education course mandated by N.J.S.A. 18A:4-28.7 so as to require a student's excusal

from the course where the parent presents that the course conflicts with his conscience or sincerely held moral or religious beliefs. .....

. . . . . .

The threshold question in this case is whether N.J.S.A. 18A:35-4.7 is applicable to the District's drug education course, which is mandated by N.J.S.A. 18A:4-28.7. . . . . .

. . . . . .

It is well established the meaning of a statute first must be sought in the language of the statute. ... If the language of a statute is clear and unambiguous on its face, we may not go beyond the words of the statute in order to devine the Legislature's intent. .....

. . . . . We find that the words of the statute involved here are clear and unambiguous, and that application of the language of each neither

results in conflict between them nor leads to absurd or anomalous results. .....

. . . . . .

Petitioner's request for excusal of her daughter from drug education meets the requirements of N.J.S.A. 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug education part of its health curriculum without penalty. ... ..... However, we reiterate that we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of the statute..... We further emphasize that our application of N.J.S.A. 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant the statute.

.. .....

. . . . . .

For the reasons set forth above, we reverse the Commissioner's decision. In doing so, we find that oral argument is not necessary in order for us to arrive at a fair resolution of this case and, therefore, deny the Board's motion for oral argument, which it filed after it submitted its exceptions to our Legal Committee's Report in this matter.

Alice Holzapfel opposed

Attorney exceptions are noted

December 3,1986

Date of Mailing Dec. 5, 1986

## Appendix D

COMMISSIONER OF EDUCATION

DECISION (EXCERPTS)

S.T. on behalf of her minor child, N.T.

PETITIONER

V.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

RESPONDENTS

---

SYNOPSIS

Parent sought daughter's excusal from high school's drug education course of study mandated by N.J.S.A. 18A:35-4 and 18A:4-28.7 and alleged violation of statutory rights under "Parents Rights to Conscience Act. " ( N.J.S.A. 18A:35-4.6 et seq)

Initial decision found that N.J.S.A. 18A:35-4.6 was inapplicable as the basis for N.T.'s excusal from any portion of the Board's drug education course mandated

under N.J.S.A. 18A:4-28.7. ALJ determined legislative intent when N.J.S.A. 18A:35-4.6 was enacted was to eliminate drug education from the list of courses from which pupils could be excused upon parental request. Therefore, the Board must comply with its obligation to provide minimum of 10 hours of drug education per year to all pupils. No opinion was rendered on whether petitioner's First Amendment rights were violated. Petition was dismissed.

Commissioner affirmed findings and determination in initial decision relying on legislative history and Senate Committee Statement to establish that clear intent was not to excuse any pupil from mandatory 10 hours of drug education which was intended to provide effective instruction for responsible attitudes and habits relative to drug use. As to argument that initial decision failed to rule on a possible viola-

tion of a federal constitutional question, the Commissioner reiterated that he may not decide the constitutionality of a statute.

. . . . . .

. . . . . .

The Commissioner further finds that pupil excusal from certain portions of the Board's health curriculum under N.J.S.A. 18A:35-4.7, is inapplicable to the statutory requirements as mandated by N.J.S.A. 18A:4-28.7. Finally, the Commissioner hereby directs that all pupils under the Board's direction and control who are subject to N.J.S.A. 18A:4-28.7 be required, without exception, to complete successfully a minimum of ten (10) clock hours of instruction in drug education.

IT IS SO ORDERED.

Saul Cooperman
February 25,1986 Commissioner of Education

Date of Mailing- February 25,1986

Appendix E

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 7052-85
AGENCY DKT NO. 378-11/85

S.T. ON BEHALF OF HER MINOR CHILD, N.T.,

Petitioner

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

Respondents

---

Joseph F. Shanahan, Esq., for petitioner

Frederick A. Jacob, Esq., for respondents (Jacob & Robinson, attorneys)

Record Closed December 31,1985 Decided: January 16,1986

BEFORE LILLARD E. LAW, ALJ: ( Pertinent Excerpt of Decision)

Petitioner, S.T. the mother of N.T. a minor pupil enrolled in the eleventh grade at the Millville Senior High School under the direction and control of the Board of Education

of the City of Millville ( Board) alleges, among other things, that the Board is in violation of her statutory right under N.J. S.A. 18A:35-4.7 to have N.T. excused and removed from the Board's required drug education course of study which is mandated by N.J.S.A. 18A:35-4 and N.J.S.A. 18A:4-28.7. Petitioner filed before the Commissioner of Education a verified petition for Declaratory Judgment, together with an Application for Stay of Current Action taken by the Board in refusing to excuse N.T. from its drug education class.

.....

The parties stipulated to the material and relevant facts of the matter, therefore eliminating the need for a plenary hearing.

. . . . . .

. . . . . .

Given these historical facts and circumstances, this administrative tribunal can apply no other construction to the statute

than that intended by the Legislature. In construing a statute, the initial task of the court is to seek the legislative intent, and to that end it must consider any history which may be of aid. .... Generally a court's duty in construing a statute is to determine the intent of the Legislature. ... Having considered the statute, N.J.S.A. 18A:35-4.6, together with its legislative history, I FIND and CONCLUDE that the Legislature did not intend to include the statutorily mandated drug education program as one to which pupils may be excused therefrom.

. . . . . .

Therefore, I FIND and CONCLUDE that N.J.S.A. 18A:35-4.6 is inapplicable to warrant an excuse from any portion of the Board's drug education program as mandated by N.J.S.A. 18A:4-28.7.

No opinion is expressed, nor decision made, on the question of whether or not petitioner's rights to freedom of religious expression

have been violated or abridged, under the First Amendment to the United States Constitution, as alleged.

I hereby FILE my Initial Decision with Saul Cooperman for consideration.

Lillard E. Law, ALJ

16 Jan. 1986

Appendix F

IN THE SUPREME COURT
OF THE STATE OF NEW JERSEY
C-526 September Term 1988
29,143
A-2213-86T7

S.T. ON BEHALF OF HER
MINOR CHILD, N.T.,

Appellant

v.

THE BOARD OF EDUCATION OF
THE CITY OF MILLVILLE AND
WARREN E. ELLIOTT, PRINCIPAL
OF MILLVILLE SENIOR HIGH
SCHOOL

Respondents

RECEIVED
MAR. 17 1989
SUPREME COURT
OF NEW JERSEY

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that S.T. on behalf of her minor child, N.T., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final decision of the Superior Court of New Jersey, Appellate Division and from the final Order of the Supreme Court of New Jersey dismissing

appellant's appeal and entered in this action on December 21,1988.

This appeal is taken pursuant to 28 U.S.C. S. 1257 (2).

Joseph F. Shanahan
Counsel for Appellant

CERTIFICATION (A-2213-86T7)

This is to certify that on this 17 day of March, 1989 three copies each of this notice of appeal to the Supreme Court of the United States on behalf of appellant were hand delivered or mailed with postage prepaid to the offices of the following:

Frederick A, Jacob, Esq.
Jacob & Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan

## APPENDIX G

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of March 1989 three copies of the Jurisdictional Statement were hand delivered or mailed with postage pre-paid to the offices of the following:

Frederick A. Jacob, Esq.
Jacob & Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan
Joseph F. Shanahan
Attorney for Appellant

Appendix H

JOSEPH F.SHANAHAN
RD 2 Box 105
Lambertville, New Jersey 08530
609-397-3158
Attorney for Petitioner- Respondent

S.T. on behalf of her minor child, N.T.

Petitioner-Respondent

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL

Defendants- Appellants

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-2213-86 T7

Civil Action

NOTICE OF APPEAL TO THE SUPREME COURT OF NEW JERSEY

TO: Frederick A. Jacob, Esq. , Attorney for Defendants- Respondents
600 Main Street
Millville, New Jersey 08332

Notice is hereby given that S.T., on behalf of her minor child, N.T., petitioner-

respondent, appeals to the Supreme Court of New Jersey from the whole of the decision of the Appellate Division of the Superior Court ( the judges sitting therein being Melvin Antell, Richard Cohen and David Landau) entered on June 22, 1988 in favor of defendant-appellants and reversing the decision of the State Board of Education, dated December 3,1986.

Joseph F. Shanahan
Attorney for Petitioner-
Respondent

Dated 7 July 1988

Docket No. 29,143
A-2213 86T7

A notice of appeal in the above matter was received by this office on 7/7/88

Stephen Townsend

August 29,1988

Appendix I

NOTICE OF APPEAL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

S.T., on behalf of her minor child, N.T.,

Petitioner-Appellant

vs

BOARD OF EDUCATION OF CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL

Respondents-Respondents

Attorney of Record

Jacob and Robinson
600 W. Main Street, P.O. Bx 429
Millville, New Jersey 08332
609-825-0700
Attorney for Respondents

On Appeal From
State Board of Education
State Board Docket No. 16-86
A.L.J. Lillard E. Law

Notice is hereby given that all named respondents herein appeal to the Superior Court of N.J., Appellate Division, from the judgment entered in this

action on December 3,1986 in favor of

S.T., on behalf of her minor child, N.T.,

petitioner-appellant

Notice of Appeal has been served on:

State Board of Education

S.T., on behalf of her minor child, N.T.,

Joseph F. Shanahan, Esq. RD 2 Box 105
Lambertville, N.J. 08530,

W. Cary Edwards, Attorney General CN 080
Trenton, N.J. 08625

I hereby certify that I have served a copy of this notice of appeal on each of the persons required as indicated above

January 8, 1987

Frederick A. Jacob, Esq.

Forwarded to Appellate Division, certified mail , January 8,1987

Appendix J

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of April 1989 three copies of the corrected Jurisdictional Statement were hand delivered or mailed with postage prepaid to the offices of the following:

Frederick A. Jacob, Esq.
Jacob and Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan
Attorney for Appellant

Supreme Court, U.S.
FILED
MAY 23 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-1753

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

S.T., ON BEHALF OF HER MINOR CHILD, N.T.,
Appellant

vs.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,
Respondent

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

# MOTION TO DISMISS AND/OR AFFIRM AND APPENDIX

FREDERICK A. JACOB, ESQUIRE
Attorney for Respondent
Jacob, Robinson & Ferrigno
600 W. Main Street, P.O. Box 429
Millville, New Jersey 08332
(609) 825-0700
Linda T. Pirolli, Esquire, on the Motion.

11 PP

## QUESTION PRESENTED FOR REVIEW

Whether a decision of the Appellate Division of the Superior Court of New Jersey as to which Certification has been denied by the Supreme Court of New Jersey should not be reviewed to allow appellant unspecified relief where: (1) the education statute challenged by appellant before the Appellate Division has been repealed and new legislation enacted, and (2) appellant has been removed from the public school system whose practices she disputed.

TABLE OF CONTENTS

Question Presented for Review . . . . .1

Table of Contents . . . . . .2

Jurisdiction . . . . . 3

Statutes Involved . . . . . .3

N.J.S.A. 18A:4-28.1 . . . . . .3
N.J.S.A. 18A:4-28.7 . . . . . .4
N.J.S.A. 18A:35-4.7 . . . . . .4
N.J.S.A. 18A:35-5 . . . . . .5
N.J.S.A. 18A:40A-1 . . . . . .6

Statement of the Case . . . . . .7

Argument . . . . . 14

Appendix to Motion to Dismiss and/or Affirm:

Initial Decision of Lillard E. Law, Administrative Law Judge, January 16, 1986. . . . .27a

Decision of Commissioner of Education, February 25, 1986. 84a

Decision of State Board of Education, December 5, 1986 . . .97a

## JURISDICTION

The United States Supreme Court has jurisdiction of this matter pursuant to 28 U.S.C., Sect. 1254 (1).

## STATUTES INVOLVED

N.J.S.A. 18A:4-28.1
LEGISLATIVE FINDINGS; USE OF DRUGS

The legislature finds that teachers have heretofore been exposed to piecemeal information about the use of narcotics and other dangerous drugs. The information contained in the mass media communication involving the abuse of drugs by young people is often inaccurate and bizarre, creating many misconceptions about drugs and their effects. Teachers are searching for information which is appropriate for student consumption and effective instructional technique. For a more rational handling of

the problem of narcotics and in order to secure a mood of increased calm and objectivity throughout the school system an effective presentation of the problem is needed.

N.J.S.A. 18A:4-28.7
INCORPORATION OF DRUG EDUCATION UNIT INTO CURRICULUM

On and after January 15, 1971, each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades.

N.J.S.A. 18A:35-4.7
PARENT'S STATEMENT OF CONFLICT WITH CONSCIENCE

Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

N.J.S.A. 18A:35-5
MAINTENANCE OF PHYSICAL TRAINING COURSES; FEATURES

Each board of education shall conduct as a part of the instruction in the public schools courses in health, safety and physical education, which courses shall be adapted to the ages and capabilities of the pupils in the several grades and departments. To promote the aims of these

courses any additional requirements or rules as to medical inspection of the school children may be imposed.

N.J.S.A. 18A:40A-1
INSTRUCTIONAL PROGRAMS ON DRUGS, ALCOHOL AND CONTROLLED DANGEROUS SUBSTANCES; CURRICULUM GUIDELINES

Instructional programs on the nature of drugs, alcohol and controlled dangerous substances, as defined in section 2 of P.L. 1970, c. 226 (C.24:21-2), and their physiological, psychological, sociological and legal effects on the individual, the family and society shall be taught in each public school and in each grade from kindergarten through 12 in a manner adapted to the age and understanding of the pupils. The programs shall be based upon the curriculum guidelines established by the Commissioner of Education pursuant to section 2 of this act, and shall be included in the curriculum for each grade in such a

manner as to provide a thorough and comprehensive treatment of the subject.

## STATEMENT OF THE CASE

During the 1985-1986 school year, N.T. was a junior in Millville Senior High School, a public school of the state of New Jersey. In compliance with statutory mandate, respondent provided a semester-long course on the problems of drug abuse, N.J.S.A. 18A:4-28.1 et seq. The drug abuse class was held in the fall semester of the junior high school year. In the spring semester, respondent provided a health class addressing issues of sex education, marriage and family living pursuant to the statutory mandate of N.J.S.A. 18A:35-5 et seq.

N.T.'s mother, S.T., objected to N.T.'s compelled attendance at drug education class in the fall semester based upon N.J.S.A.

18A:35-4.7, known as The Parents' Right to Conscience Act, and asked that N.T. be excused from attendance. Respondent advised petitioner that since a course in drug education was mandated by statute, petitioner could not be totally excused; however, respondent offered to eliminate particular lessons that S.T. found to be offensive. Respondent made this offer despite its position that N.J.S.A. 18A:35-4.7 was not available to students wishing to be excused from the drug education course mandated by N.J.S.A. 18A:4-28.1 et seq., but rather was available only to students objecting on grounds of conscience to attendance at the course in Marriage and Family Life. S.T. refused to comply with respondent's request and N.T. did not attend class or complete course assignments, as a consequence of which she ultimately received a failing grade for the semester.

On November 4, 1985 (and during the fall semester in question), N.T. filed a Petition for Declaratory Judgment before the New Jersey Commissioner of Education together with an Application for Stay from Current Action, to stop respondent from refusing to excuse N.T. from the drug education class. The New Jersey Commissioner of Education transmitted the matter to the New Jersey Office of Administrative Law for expedited determination. Following stipulations by counsel as to relevant facts, the Administrative Law Judge assigned to the matter considered the petition as cross-motions for summary judgment on the issue whether the Board's refusal to excuse N.T. from drug education class was violative of N.J.S.A. 18A:35-4.7, The Parents' Right to Conscience Act.

The decision of the Administrative Law Judge dated January 16, 1986, held N.J.S.A. 18A:35-4.7 inapplicable to warrant the excuse of a student from the drug education program mandated by N.J.S.A. 18A:4-28.1, (Respondent's appendix 25a). The decision of the Administrative Law Judge was affirmed by the decision of the Commissioner of Education on February 25, 1986, (Respondent's appendix 26a). However, on December 5, 1986, the State Board of Education summarily reversed the Administrative Law Judge and Board of Education, concluding that N.J.S.A. 18A:35-4.7, The Parents' Right to Conscience Act, required respondent to permit N.T. to be excused from the drug education course without penalty, (Respondent's appendix 96a). By December, 1986, appellant's junior year marking periods had been concluded and appellant had been removed from respondent's

school system and enrolled in private school.

On January 9, 1987, respondent Millville Board of Education filed a Notice of Appeal from the decision of the State Board of Education with the Appellate Division of Superior Court of New Jersey on the ground that N.J.S.A. 18A:35-4.7, The Parents' Right to Conscience Act, applied only to the health curriculum mandated by N.J.S.A. 18A:35-5 et seq. and not to the drug education curriculum mandated by N.J.S.A. 18A:4-28.1 et seq. Appellant did not cross appeal. The brief of Millville Board of Education was filed with the Appellate Division on May 19, 1987.

On January 13, 1988, N.J.S.A. 18A:4-28.1 et seq. was repealed and N.J.S.A. 18A:40A-1 became effective, establishing mandatory programs on drugs, alcohol and controlled dangerous substances outside the

parameters of the health curriculum, N.J.S.A. 18A:35-5 et seq., of which The Parents' Right to Conscience Act is a component.

On June 22, 1988, the Appellate Division of the Superior Court of New Jersey dismissed Millville's Appeal as moot based upon the enactment of N.J.S.A. 18A:40A-1 et seq., which it held placed the drug education curriculum outside the confines of the health curriculum at N.J.S.A. 18A:35-5, (Appellant's Appendix B). Appellant requested certification of the matter by the Supreme Court of New Jersey, and her Petition was dismissed by that Court on December 21, 1988, (Appellant's Appendix A).

On March 21, 1989, petitioner served upon respondent copies of the Jurisdictional Statement it had filed with the Clerk of the United States Supreme Court. Appellant's Notice of Appeal was filed with the Supreme

Court of New Jersey on March 17, 1989; however, no Notice of Appeal was filed with the Appellate Division of the Superior Court of New Jersey. On March 24, 1989, the Clerk of the United States Supreme Court returned to appellant her Jurisdictional Statement, thereby tolling the time within which respondent's response was to be filed. On April 13, 1989, appellant refiled her Jurisdictional Statement. On April 20, 1989, the Clerk of the United States Supreme Court returned to appellant her Jurisdictional Statement on the ground that no Notice of Appeal was timely filed with the Superior Court of New Jersey, Appellate Division. On April 26, 1989, counsel for appellant resubmitted to the Clerk of the Supreme Court his Jurisdictional Statement together with the documentation required by the Clerk for docketing. On May 9, 1989 respondent's counsel received notice that

the appeal had been docketed retroactively to March 20, 1989. By telephone conference with Supreme Court Clerk, Suzy McDivitt, counsel for respondent confirmed that respondent had 30 days from the date appellant's papers were received and docketed, April 28, 1989, to file its Motion to Dismiss and/or Affirm. Accordingly this motion is being filed on or before May 28, 1989.

## ARGUMENT

I. THE DECISION OF THE SUPREME COURT OF NEW JERSEY DENYING CERTIFICATION AND AFFIRMING THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY SHOULD BE AFFIRMED BECAUSE THE ISSUE RAISED BY APPELLANT IS MOOT.

Appellant challenges respondent's interpretation of N.J.S.A. 18A:4-28.1. Respondent interpreted N.J.S.A. 18A:4-28.1 to require all students to attend drug education class regardless of religious

beliefs. Appellant asserts that the requirements of N.J.S.A. 18A:4-28.1 were to be relaxed in the event of assertion by a parent of objection to the curriculum on religious grounds, based upon N.J.S.A. 18A:35-4.7, The Parent's Right to Conscience Act. Respondent maintained that the Right to Conscience Act was unavailable to appellant to permit appellant totally to opt out of an otherwise mandatory course.

N.J.S.A. 18A:4-28.1 has, since appellant's challenge to the statute at the hearing level, been repealed and replaced by new legislation which definitively places the drug education curriculum outside the application of The Parents' Right to Conscience Act. The Appellate Division of the Superior Court of New Jersey and the Supreme Court of New Jersey have each, in turn, refused to consider appellant's challenge to N.J.S.A. 18A:4-28.1, on the

ground that it is moot.

Respondent submits that the appeal should be dismissed, and the decision of the Supreme Court affirmed, because the question raised by the appeal is moot. The appeal is moot as to appellant because the course is over, appellant was removed from respondent's school system, and appellant's failing grade has not been shown to have unduly burdened her progress in her academic career. Likewise, the appeal is moot as to other persons because the statute challenged has been repealed and other persons are not within its prospective application. Its successor, N.J.S.A. 18A:40A-1, the statute establishing drug education as an expanded mandatory course outside the application of The Parents' Right to Conscience Act, is not the subject of the present case.

II. THE APPEAL SHOULD BE DISMISSED BECAUSE APPELLANT HAS FAILED TO PRESENT A QUESTION UNDER THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

Appellant alleges violation by respondent of her rights under the Free Exercise Clause of the First Amendment to the United States Constitution. She argues that to be compelled to attend drug education class in public high school would unduly burden her exercise of religion, because she might hear, see or otherwise perceive something offensive to her beliefs, and that such perceptions would prove to be an "occasion of sin". Thus, the only form of exercise of religious belief in question is the concept that even to hear or see a statement or action perceived as religiously repugnant is, in itself, wrong and therefore to be avoided. When appellant refused to attend drug education class, respondent attempted to accommodate appellant's beliefs

by offering to allow appellant to be excused from the particular lessons she found offensive. Respondent took this position in order to attempt to accommodate appellant based on its understanding that The Parents' Right to Conscience Act, N.J.S.A. 18A:35-4.7 was not available to permit appellant to opt out of the course entirely by reason of conscience.

Appellant relies in support of her position on Sherbert v. Verner, 374 U.S. 398 (1963). It is submitted that Sherbert is inapplicable to the issues here, for the following reasons. First, respondent here has a strong interest in complying with mandatory drug education, both because it is mandated by the state and because the curriculum is designed to educate children to the evils of drug and alcohol abuse, whose consequences the state must exercise its police power to control. In Sherbert,

although South Carolina also mandated that unemployment benefits were not to be afforded to those who observe a Saturday sabbath, that statutory mandate was flawed because Sunday worshippers were entitled to receive unemployment compensation benefits. Moreover, South Carolinians did not stand to benefit in more than a de minimis fashion from the denial to appellant of her benefits. Thus no broad-based state interest in prevention of an epidemic problem such as drug abuse was at stake in Sherbert, as it is here.

Sherbert is inapplicable because the South Carolina statute there directly affected appellant's ability to practice her religion by observing a Saturday sabbath, whereas the New Jersey statute providing for mandatory drug education has no direct bearing on appellant's ability to practice her beliefs and (except in her allegation

that even passively to perceive a repugnant view constitutes an "occasion of sin", a situation that would appear to render her able to practice her beliefs only in a cloister), respondent's actions did not prevent appellant from observing a sabbath or otherwise from actively doing those things her religion teaches her to do.

Third, the South Carolina statute reversed in Sherbert was reversed in part because it prevented those who observed Saturday sabbath to collect unemployment compensation while it permitted those who observed Sunday sabbath to collect those benefits. Appellant here would have the state of New Jersey establish different curricula for students of different beliefs, exactly the practice proscribed in Sherbert for two reasons. First, the establishment of different curricula for persons of different faiths would excessively entangle

the government of the state of New Jersey with organized religion. Second, the state has an interest, for reasons of economy, feasibility and quality of education, in providing uniform curricula throughout its school districts.

Finally, the effect of the South Carolina statute in Sherbert had the effect of telling appellant that the observance of Saturday sabbath was, for certain purposes, not an appropriate religious belief. Respondent here is not telling appellant that her practices were in any way wrong. Indeed, respondent offered to accommodate appellant by permitting her to opt out of particular lessons whose lesson plans she found objectionable. Appellant rejected this proposal, electing instead to seek a ruling that the entire curriculum burdened her free exercise. Where there is adequate provision for excusal from class on grounds

of religious belief, sex and family life education programs have been found not to violate the Free Exercise Clause, Smith v. Ricci, 89 N.J. 514 (1982), Medeiros v. Kiyosaki, 52 Hawaii 436 (1970).

III. THE DECISION OF THE SUPREME COURT OF NEW JERSEY SHOULD BE AFFIRMED BECAUSE THE QUESTION PRESENTED BY APPELLANT IS NOT SUFFICIENTLY SUBSTANTIAL TO WARRANT FURTHER ARGUMENT.

Point II. of appellant's Jurisdictional Statement addresses "the jurisdiction (of the Supreme Court) to review the decision of the Appellate Division because the non-federal grounds stated in the decision were not adequate to support the decision."

Respondent concedes that jurisdiction of the Supreme Court in this matter would be appropriately based upon 28 U.S.C. Sect. 1257 (2). This, however, does not appear

to be the real thrust of appellant's argument. Rather, appellant argues that since N.J.S.A. 18A:4-28.7 had not yet been repealed at the time that appellant had received her failing grade, appellant therefore presents a substantial question to the Supreme Court; i.e., whether appellant was entitled to be excused from class without penalty prior to the repeal of N.J.S.A. 18A:40A-1. Respondent submits that the appeal should be dismissed because the question presented in this case is not substantial enough to warrant consideration by the Supreme Court of the United States.

When appellant objected to attendance at her drug education class, respondent requested that she and her parents indicate which lesson plans were objectionable to her in order that alternate arrangements could be made for her. Appellant rejected this offer and refused to attend any subsequent

classes, thereby insuring for herself the receipt of a failing grade for the semester. This case does not present a situation in which a student is compelled to attend an entire course which allegedly conflicts with his or her free exercise of religion. It has been held that statutes mandating attendance at courses containing material which a student alleges to be in conflict with his or her free exercise do not violate the First Amendment so long as a student is offered alternate instruction to those portions of the curriculum objected to by the student on religious grounds, Smith v. Ricci, 89 N.J. 514 (1982), Medeiros v. Kiyosaki, 52 Hawaii 436 (1970). This case does not present a factual situation of sufficient substance to warrant the Court's consideration because respondent did not compel appellant to attend every class in the course. Thus the private wrong which

appellant seeks to remedy - the failing grade - was not the result of appellant's refusal to submit to the statutory mandate of N.J.S.A. 18A:4-28.1; rather, it was the result of her choice to refuse to work with respondent toward an alternate class or independent study program she could accept.

This case, moreover, is not sufficiently substantial to warrant the Court's consideration because the question of the constitutionality of N.J.S.A. 18A:4-28.1 et seq., is of no prospective importance. The repeal of N.J.S.A. 18A:4-28.1 and its replacement by N.J.S.A. 18A:40A-1 have rendered any discussion of the impact of N.J.S.A. 18A:4-28.1 upon free exercise moot. N.J.S.A. 18A:40A-1 has been interpreted by the Appellate Division of the Superior Court of New Jersey to mandate drug education: no alternate system for students objecting on grounds of conscience or free

been included. It is this statute, N.J.S.A. 18A:40A-1, and not N.J.S.A. 18A:4-28.1, which presents a question of sufficient substance to warrant consideration by the Court.

## CONCLUSION

Respondents submit that the question raised by the appeal is moot, that appellant has failed to present a question under the Free Exercise Clause of the First Amendment to the United States Constitution, and that the question as raised by appellant is so insubstantial as not to warrant consideration by the Court. Accordingly, respondents request that the Court dismiss the appeal, or alternatively, that it affirm the decision of the Supreme Court of New Jersey.

Respectfully submitted,

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(609) 825-0700
Counsel for Respondent

## APPENDIX

### INITIAL DECISION OF LILLARD E. LAW, ADMINISTRATIVE LAW JUDGE - 1/16/86

Petitioner, S.T., the mother of N.T., a minor pupil enrolled in the eleventh grade at the Millville Senior High School under the direction and control of the Board of Education of the City Millville (Board), alleges, among other things, that the Board is in violation of her statutory right N.J.S.A. 18A:35-4.7 to have N.T. excused and removed from the Board's required drug education course of study which is mandated by N.J.S.A. 18A:35-4 and N.J.S.A. 18A:4-28.7. Petitioner filed before the Commissioner of Education a verified Petition for Declaratory Judgment, together with an Application for Stay of Current Action taken by the Board in refusing to excuse N.T. from its drug education class.

On November 6, 1985, the Commissioner

transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1, et seq. and N.J.S.A. 52:14F-1, et seq., with instruction for the conduct of an immediate hearing on petitioner's request for interim relief and stay of the Board's action not to excuse N.T. from its drug education program. Oral argument on petitioner's application for interim relief was to be heard on November 18, 1985. On November 15, 1985, the undersigned was advised that the parties had entered into a consent agreement, thereby eliminating the need for oral argument on petitioner's application for a stay of the Board's action. The consent agreement, into which the parties voluntarily entered, provided, in pertinent part, as follows:

1. The Board's Drug Education, pursuant to N.J.S.A. 18A:4-28.7, which is at issue here and in which

petitioner, N.T., has been enrolled, has been completed for the First Semester of the 1985-1986 academic year.

2. The Board's Second Semester Drug Education program is to commence on or about February, 1986. In the event of [sic] a final decision by the Commissioner of Education is not forthcoming prior to the commencement of the Second Semester, petitioner, N.T. is hereby excused from the Board's Drug Education Program, without penalty.

A telephonic prehearing conference was held on November 18, 1985, at which, among other things, the parties agreed that the issues to be determined by this administrative tribunal are as follows:

1. Whether the Board's refusal to excuse N.T. from its drug education is in violation of petitioner's constitutional right of the free exercise of petitioner's religion under the First Amendment to the United States Constitution.

2. Whether petitioner has met the excusal requirements from the Board's drug education program as provided by N.J.S.A. 18A:35-4.7.

3. Whether the Board may or may not penalize petitioner N.T. by the issuance of a failing grade, due to petitioner's absence from the Board's drug education program.

4. Whether the Board is required to establish an alternate program for petitioner N.T., which is exclusive of and not associated in any manner with health, family life education and/or sex education curricula.

5. Whether petitioner has complied with the Board's policy and/or the statutory provisions (N.J.S.A. 18A:35-4.7) with regards to N.T.'s excusal from its drug education program.

6. What effect does N.T.'s removal from the Board's drug education program have with respect to the statutory mandate that "... each school district having secondary school grades shall incorporate into its health education curriculum the ... drug education unit ... a minimum of 10 clock hours per school year as a part of the ongoing health curriculum for secondary school grades"?
   a. Are the provisions of N.J.S.A. 18A:35-4.7 applicable to N.J.S.A. 18A:4-28.7?

The parties stipulated to the material and relevant facts of the matter, therefore eliminating the need for a plenary hearing. The parties, accordingly, cross-moved for summary disposition seeking a declaratory judgment with respect to their respective positions by way of briefs. The last submission was received on December 31, 1985.

It was agreed that because of the time constraints involved with this matter, the undersigned would make every effort to execute an initial decision on or before January 17, 1986, for the Commissioner's immediate consideration and determination.

STIPULATIONS

The parties stipulate as to the facts of this matter as set forth in petitioner's

Petition for Declaratory Judgment and identified as Attachments A-1, A-2, A-3, B-1, B-2, B-3, C, D, E, F, and G. The documents are described and/or summarized as to their relevance to the herein matter, hereinbelow as follows:

1. A hand-printed note, dated September 16, 1985, addressed to Warren Elliott, Millville Senior High School Principal (principal) from petitioner S.T. requesting that her daughter, N.T., be immediately withdrawn, without penalty, from the psychology and drug education courses. S.T. asserts that "the primary reason these classes are unacceptable to us is that research has shown these courses are permeated with the philosophy of secular humanism, which is diametrically [sic] opposed to the Judeo-Christian principles to which we ascribe ..." Petitioner

suggested that "these objectionable courses be substituted by a mutually agreeable alternative mini-course" (A-1).

2. A three-page notarized document, having been sworn and subscribed on September 15, 1985, which is typewritten with blank spaces that petitioner filled in with the relevant information as to the addressee (Mr. Elliott) and that S.T. is the parent of N.T., who attends Millville Senior High School. The typewritten portion of the document sets forth, among other things, legal conclusions with respect to pupil and parental rights, together with an assertion that federal regulations provide a procedure for the filing and reviewing of complaints where an alleged violation of said pupil-parent rights are abridged. Petitioner therein requests that her child/children not be involved in twenty-seven (27) enumerated school activities unless she has first been

given the opportunity to review all of the materials to be used by the school authorities and, further, that she has given her written approval for their use (A-1).

3. A typewritten letter addressed to the principal from S.T., dated September 26, 1985, to supplement S.T.'s letter dated September 16, 1985. Therein S.T. stated in part:

> Perhaps you misunderstood my concern that my Constitutional right to the free exercise of my religion is being offended by forcing my daughter [N] to take a course which teaches what we believe is sinful.
>
> Once again I respectfully request my daughter be immediately withdrawn, without penalty, from the drug education course.
>
> [A-2]

Petitioner requested the principal to respond, in writing, within five days of receipt of the letter (A-2).

4. A form letter dated October 8, 1985, on which petitioner filled in appropriate blanks in handwriting to convey the intended purpose for the communication. The form letter is reproduced here with the filled-in portions and other handwriting underlined thus _____.

(omitted) Address
Oct. 8, 1985 Date

Mr. Warren Elliott
Principal
Millville Senior High School

Re: Excusal of [N.T.]
from Family Life Curriculum

Once again I hereby request my constitutional right of excusal for my son/daughter [N.T.] from that portion of the Family Life (Sex Education) Health curriculum listed in your outline as [not discernible] drug education and scheduled for the school year 1985-86 because of the scandalous material which is in it and which, potentially, may be introduced at any time therein and the teaching of which violates his/her (and our family's) religious and moral beliefs.

The authority for such request is N.J.S.A. 18A:35-4.7 and Smith v. Ricci, 89 N.J. 514, 521 where the Supreme Court of New Jersey states (under the Free Exercise Clause)

"If the program violates a person's beliefs, that person is not required to participate. Where there is no compulsion to participate in this program (Family Life Education) there can be no infringement upon appellants' rights freely to exercise their religion."

It is understood that such excusal will be accomplished by the administrative and instructional staff without comment.

It is further understood that, pursuant to the above statute (N.J.S.A. 18A:35-4.7), no penalties as to credit for graduation shall result therefrom.

Please respond, in writing, within five days of receipt of this letter.

Very truly yours,
S.T.
Parent/Guardian
[A-3]

5. The principal's response to petitioner's letter of September 26, 1985, dated October 1, 1985, wherein the principal refers to several telephone conversations concerning S.T.'s request to have N.T. withdrawn from the Board's drug education program. The letter asserts that the

principal, guidance counselor and vice-president had all advised petitioner of the process whereby petitioner was afforded the opportunity to document, in writing, her reasons for requesting N.T.'s exclusion from the drug education program. The principal advised petitioner that he would not withdraw N.T. from the program until such time that the principal was satisfied the request was reasonable, justified and within the guidelines of the state and local school administrative policies and procedures.

The principal also responded to petitioner's letter of September 16, 1985 (A-1), contending that it was too general and vague, and he asserted that he believed it to be a misapplication of the Hatch Amendment, which was alleged by petitioner in the notarized document (A-1). The principal asserted that he was willing to reconsider petitioner's request in the event

petitioner followed the Board's complaint procedures (B-1).

6. The principal responded to petitioner's "form letter" of October 8, 1985 (A-3), by way of letter dated October 9, 1985, wherein the principal asserted and reiterated that the drug education portion of the Board's curriculum was not a part of its "Family Life Education" or "Sex Education" curriculum. The principal observed that under N.J.S.A. 18A:35-4.7, the statute clearly proves that a pupil "...shall be excused from that portion of the course where such instruction is being given..." (emphasis supplied in the letter). The principal, among other things, observed that petitioner refused to follow the Board's complaint and/or excusal procedures by providing an outline of those sections of the text and/or "Drug Education" curriculum to which petitioner objected and

to state the reasons why such sections were objectionable to petitioner and N.T. The principal advised petitioner that if, in the opinion of petitioner, N.T. had suffered a trauma attributable to the drug education course of study, the principal was willing to establish a conference with the teacher, petitioner and N.T. to minimize or eliminate the alleged trauma by way of substituted and/or alternative assignments; however, complete withdrawal from the course was not an option (B-2).

7. A letter, dated October 15, 1985, to S.T. from the principal, which states as follows:

> ...Contrary to the opinion which you expressed in your letter to me of 10/11/85, I have the utmost concern for the physical and emotional well-being of your daughter, [N.T.]. If your daughter suffers any spiritual, psychological, emotional, or physical problems, I suggest you look to yourself as the cause of these problems.
>
> We operate a public high school

and as such cannot make your religious standards as or ethics the norm. I certainly have considered your daughter's legal rights and simply disagree with you and your attorney as to policy, procedure, and state/federal statutes involved in this case.

You continue to refuse to supply me with a written analysis of your specific objections to the "Drug Education" program. I have offered to meet with you and the teacher to discuss the possibility of occasional alternative assignments. You have ignored the opportunity for this dialogue, even though it has been requested in writing at least three times now.

Furthermore, I am appalled that someone who professes deep religious convictions would use the kind of vulgarity and extreme profanity that was attributed to you Friday at Millville Senior High School. It was reported to me by a substitute teacher that you said something along the lines of "I've had enough (expletive delted) dealings with Mr. Elliott." She wasn't 100% sure of the exact, literal statement, but the expletive was definitely included in your statement. If it is true, you should be ashamed of yourself. What would your daughter think if she heard such vulgar language? I hope that the language which you allegedly used was a misunderstanding or that the person who heard it was mistaken.

Please be advised that I will hold you personally accountable for any and all spiritual, psychological, emotional, and/or physical harm whatsoever done to your child as a result of your pressure on her to be removed from the "Drug Education" class. Hopefully, she will be able to deal with her problems and face reality with emotional courage and stability, drawing on her Christian strength and stamina to sustain her.

Sincerely yours,
[signed]
Warren E. Elliott
Principal, M.S.H.S.

WEE/jib
cc: Dr. Gene Stanley, Superintendent
Mr. G. Larry Miller, Assistant Superintendent
Mr. Frederick A. Jacob, Attorney - Bd. of Ed.
Mr. Paul MacLuskie, Teacher
[B-3]

8. Note from Zae Uh Shim, M.D. dated October 4, 1985, diagnosing L.T. as having asthma. Under "Remarks" the note states:

Emotional upset can make asthma attack. Please excuse from Drug abuse class Next wk. She was very upset after [not discernible] textbook. [C]

9. Letter, dated October 16, 1985, addressed to S.T. from the principal advising petitioner as follows:

> On October 16, 1985 I received your request to "immediately withdrawal [N.T.] from the eleventh grade Drug Education Class until a decision is made in the courts regarding this matter, "Please be advised that N.T. will remain in the class until a decision is made in court which will officially alter her current status.
>
> Sincerely yours,
> [signed]
> Warren Elliott
> Principal, M.S.H.S.
>
> WEE/jib
> cc Dr. Gene Stanley, Superintendent
> Mr. G. Larry Miller, Assistant Superintendent
> Mr. Frederick Jacob, Attorney-Bd. of Ed.
> Mr. Paul MacLuskie, Teacher
> [D]

10. Millville Senior High School Mid-Marking Period Notice, dated October 18, 1985, executed by Mr. MacLuskie, teacher of

health, concerning N.T., asserting that N.T.'s causes for difficulty include the following check-marked reasons:

(3) Has failed to make up work missed due to absence from class;

(5) Does not take advantage of available help;

(8) Parent-Teacher conference needed;

(14) Parent conference is recommended to clarify the need for alternative assignment. [E]

11. Letter, dated October 18, 1985, from Stephen A. Kalapos, Cumberland County Superintendent of Schools addressed to Joseph F. Shanahan, Esq., which states as follows:

> This letter is a response to your communication of October 9, 1985 regarding the request for excusal of [N.T.], a student at Millville High School, from the drug education program in that school.
>
> State law, N.J.S.A. 18A:4-28.7 requires that all secondary schools incorporate into their health education curricula,

a drug education unit which is a minimum of 10 clock hours. I assume that this is the program from which excusal is requested.

N.J.S.A. 18A:35-4 requires a course in the nature and effect of alcoholic drinks and narcotics.

N.J.S.A. 18A:35-4.7 deals with a parent's statement of conflict with conscience with reference to instruction in health, family life or sex education.

I trust this information is helpful to you.

Very truly yours,
[signed]
Stephen A. Kalapos
County Superintendent of Schools

SAK/pw
cc Mr. Warren Elliott, Principal
Millville High School
Dr. Gene Stanley, Superintendent
Millville Public Schools
[F]

12. Letter, dated October 9, 1985, from Joseph F. Shanahan to Chairman, Millville Board of Education, Re: Request for excusal from Drug Abuse Program in Millville High School, with attachments (G).

This completes the recital of those documents stipulated by the parties.

## LEGAL ARGUMENT OF THE PARTIES

### Petitioner's Position

#### POINT ONE

THE REFUSAL OF THE RESPONDENTS TO EXCUSE N.T. FROM THE DRUG EDUCATION CLASS OF THE MILLVILLE SENIOR HIGH SCHOOL IS AN ATTEMPT TO CIRCUMVENT THE INTENT OF N.J.S.A. 18A:35-4.7 AND TO RESTRICT PETITIONER'S RIGHT OF FREE EXERCISE OF RELIGION

N.J.S.A. 18A:35-4.7. Parent's statement of conflict with conscience states:

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom. [emphasis added]

In Smith v. Ricci, 89, N.J. 514 (1982), the Supreme Court of New Jersey upheld the state law mandating a family life education program on the basis that it did not violate the free exercise of religion clause of the First Amendment because of the excusal policy contained in the statute, N.J.S.A. 18A:35-4.7, which is referred to in note 1 at 520. The case states at 521:

> ...We do not question that this argument is sincerely made. Whether or not it is well reasoned we need not now decide, for we believe that the simple fact that parents can remove their children from any objectionable part of the program is dispositive. If the program violates a person's beliefs, that person is not required to participate. Where there is no compulsion to participate in this program, there can be no infringement upon appellants' rights freely to exercise their religion...
>
> [emphasis added]

It is clear from the above statute and case citation that the matter of the above excusal policy is closely involved with the constitutional right of the free exercise of religion. The fact that a person is not required to participate in such courses on the grounds of conscience is the basic reason why the constitutional argument against such mandate did not prevail in this case. N.J.S.A. 18A:35-4.7 was the linchpin in legitimatizing the regulation.

Petitioner states that in the face of the plain meaning of the statute that a conflict of conscience is the sole criterion for excusal, the actions of the respondents, Warren Elliott, the principal and the Millville Board of Education in refusing to honor petitioner's request can only be interpreted as a deliberate attempt to circumvent the intention of the statute and to restrict the constitutional rights of the

citizenry. This is evidenced by the following excerpts from the various letters of the principal in reply to petitioner's requests:

First, in his letter of 1 October 1985 (Petition, Att B1):

> I will not withdraw her until I am completely satisfied that your request is reasonable, justified and within the guidelines of our state and local school administrative policies and procedures.

Next, in his letter of 9 October 1985 (Att B2):

> You still refuse to follow Millville School District procedure whereby you are required to furnish me with a written outline of those sections of the text and/or "Drug Education" to which you object and why they are objectionable to you and your daughter.

And finally, in his letter of 15 October 1985 (Att B3):

> You continue to refuse to supply me with a written analysis of your

specific objections to the "Drug Education" program.

The statute says nothing about any request for excusal having to pass a test of being reasonable, justified or within any state or local guidelines, or to furnish the principal with a written outline or analysis of specific objections to any program. And if the State Board of Education and the Commissioner have published such guidelines they are without statutory authority for doing so.

In the letter of 9 October 1985, the respondent principal makes use of specious reasoning in his discussion with the petitioner on this subject saying:

> Again, I reiterate that the "Drug Education" portion of our curriculum has nothing to do with the "Family Life Education" or "Sex Education" portion of the curriculum.
>
> Furthermore, N.J.S.A. 18A:35-4.7 states clearly that the child..."shall be excused from that portion of the course where such instruction is

being given..." This means that you have no basis for your daughter to be withdrawn from the entire course.

As to the former, it makes no sense because there is no dispute as to the drug education class having anything to do with family life education or sex education courses at Millville High School. It has to do with the health course which is listed in the statute and included in the request for excusal.

As to the latter, it is a denial of petitioner's request for excusal on the ground of the "portion of the course" argument. A comparison of the statement in the reply to that in the request establishes the sophistry in respondent's argument because the fact of the matter is that the petitioner did specify that portion of the course from which she has a right to be excused, saying, "I hereby request ...

excusal for my daughter...from that portion of the Family Life (Sex Education) Health curriculum listed in your outline as Eleventh Grade Drug Education..."

Petitioner contends that all of the above reasons given by the principal smack of administrative harassment since they ignore the plain meaning of the statute and have the effect of restraining American citizens from exercising their right to have their children excused from mandated public school classes that offend their consciences.

In Bates v. Little Rock, 361 U.S. 516, 4 L.Ed. 2d 480, 80 S.Ct. 412 (1960), where defendants were convicted by a state court for refusing to furnish names of members of the NAACP to city officials, it is stated at 523:

> Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference. [emphasis added]

And in Roe v. Wade, 410 U.S. 113, 35 L.Ed. 2d 147, 93 S.Ct. 705 (1972), it is stated at 155:

> Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest, ... and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake... [emphasis added]

Petitioner argues that "fundamental rights" are involved in this controversy, and one of the legitimate state interests flowing from the legislative enactment (N.J.S.A. 18A:35-4.7) has to be the protection of the state from the possibility of having its Family Life Education mandate declared unconstitutional, which was the implication in the decision of Smith case. Without the statute to protect fundamental rights, the mandate might have been declared

unconstitutional. Petitioner asserts that if the Millville Board of Education is setting forth the interpretation of the statute such as that given by the principal in his first letter of reply (Att B1)-"I will not withdraw her until I am completely satisfied that your request is reasonable, justified and within the guidelines of our state and local school administrative policies and procedures" - and it is ratified by the State Board of Education, it might result in the complete sabotaging of the statute's effectiveness, with the consequent result of exposing the state's regulations of Family Life Education to a charge of violating the constitutional right of the free exercise of religion. Since the above statement by the principal reflects his reasons for refusal as given in the first letter with no reference to the "that portion of the course" argument until the

second letter, it is only logical to conclude that the first reasons given are the main and real ones. Such a policy has to result in chilling and stifling the assertion of constitutional rights by parents with spiritual values by making them subject to complying with difficult and arbitrary administrative guidelines set up outside the purview of the statute. Petitioner further asserts that the published Board policy of calling for a written outline of identification of the objectional "portion of a portion", as stated in the second letter (Att B2), is the mechanics by which the excusal policy can be circumvented. Since no one can possibly know or predict with certainty all the possible instances or times when scandalous material can be introduced into these courses (as listed in the statute), as could be done in the now-vacated reading of the

Old Testament which was always at the opening of the school session, compliance with the "portion of the portion" plan is a practical impossibility. Petitioner states that this plan can be compared with the "pound of flesh" collateral in Shakespeare's Merchant of Venice that a "pound of flesh" could not be collected because "no jot of blood" was to be included. (The understanding being that no flesh could be obtained without blood.) Similarly, it is obvious that the objectionable parts can not be excised so completely from the offending classes that the remainder is not tainted by the existence of the moral improprieties complained of which permeate such class or course. The use of such policy to implement the statute has to result in the presentation of an insignificant number of requests to the Board which, in effect,

negates the intent of the statute.

As further evidence that petitioner's request for excusal should be based on a narrow interpretation in her favor, in McCabe v. Director, N.J. Lottery Commission, 143 N.J. Super. 443 (Ch. Div. 1976), which had to do with a lottery winner trying to assign his winnings to a finance company, it is stated at 447:

> [1,2] Legislation enacted pursuant to a specific exception to the general prevailing rule should be strictly construed and not extended beyond that which its wording will reasonably bear. [emphasis added]

For the above reasons, petitioner contends that the continued refusal of respondents to excuse N.T. from the drug education class in Millville Senior High School based on the policies stated is an attempt to circumvent the intent of statute and to restrict petitioner's constitutional right of free exercise of religion.

## POINT TWO

### PETITIONER HAS MET THE EXCUSAL REQUIREMENTS FROM THE BOARD'S DRUG EDUCATION PROGRAM AS PROVIDED IN N.J.S.A. 18A:35-4.7

Petitioner made request that her daughter be excused from the Board's drug education program by letter of 8 October 1985 (Att A3) which conformed to the requirements of the statute in that it was a signed statement indicating that particular portion (Eleventh Grade Drug Education) of the course (Health) for which excusal was requested. It was denied erroneously and negligently by respondent principal who evidenced a certain unreasonableness in ignoring and refusing to honor a medical request for excusal from the same class by Dr. Shim (Att C) because of N.T.'s traumatic symptoms brought on by her forced attendance at certain of the drug education classes.

## POINT THREE

### THE BOARD MAY NOT PENALIZE N.T. BY THE ISSUANCE OF A FAILING GRADE DUE TO HER ABSENCE FROM THE DRUG EDUCATION PROGRAM

Petitioner has complied with the requirements of the statute in requesting the excusal of N.T. as indicated in Point Two above and having done so, the statute expressly states in pertinent part, "... and no penalties as to credit or graduation shall result therefrom."

## POINT FOUR

### THE BOARD IS REQUIRED TO ESTABLISH AN ALTERNATIVE PROGRAM OR ADJUST THE CURRENT ONE FOR PETITIONER N.T. WHICH IS EXCLUSIVE OF AND NOT ASSOCIATED IN ANY MANNER WITH HEALTH, FAMILY LIFE EDUCATION AND/OR SEX EDUCATION CURRICULA

N.J.S.A. 18A:36-20. Discrimination, prohibition states as follows:

No pupil in a public school in

> this State shall be discriminated against in admission to, or in obtaining any advantages, privileges or courses of study in the school by reason of race, color, creed, sex or national origin.

In Robinson v. Cahill, 69 N.J. 449 (1976), which had to do with the ratification of the idea of a thorough and efficient system of education in New Jersey, it is stated at 459, 460 that:

> ...second, to insure that there be ever present, sufficiently competent and dedicated personnel, adequately equipped, to guarantee functional implementation, so that over the years and throughout the State <u>each pupil shall be offered an equal opportunity</u> to receive an education of such excellence as will meet the constitutional standard.
> [emphasis added]

Petitioner states that in view of the above, it is essential that a plan be put in place in which N.T. and other excusees may be transferred to classes of comparable credit with a minimum of comment by fellow

students or staff members. Otherwise, it would be derogation of the above statute and case citation to send N.T., because of her sincerely held beliefs, to the conventry of a library or extra study period (there to write some inconsequential essay on a subject dreamed up on the spur of the moment by a surprised teacher). This would be punishment not teaching. She has not caused the problem. Petitioner argues that the State Board of Education is responsible since it had mandated the curriculum that caused the problem in the first place. It would have been only good prior planning to have allowed for such an added administrative inconvenience since it was common knowledge at the time that there was great public objection to the mandate.

And as for its possible increase in costs, reference is made to Detainees of Brooklyn House of Detention v. Malcolm, 520

F. 2d 392 (2d. Cir. 1975), where claim was made of unconstitutional deprivation of due process because of overcrowding in a federal house of detention. It is stated at 399: "Inadequate resources of finances can never be an excuse for depriving detainees of their constitutional rights."

For these reasons, petitioner contends that she should be allowed to transfer to another class of her choosing, having comparable credit and not associated with the offending courses.

POINT FIVE

PETITIONER HAS COMPLIED WITH THE STATUTORY PROVISIONS WITH REGARD TO N.T.'S EXCUSAL FROM THE BOARD'S DRUG EDUCATION PROGRAM

The preceding four points of petitioner are hereby incorporated as the supporting argument for this point five, including the addition that board policy, as determined

from the facts stipulated, is in error.

## POINT SIX

### THE EXCUSAL OF N.T. FROM THE DRUG EDUCATION PROGRAM IS PROPER AND WILL HAVE LITTLE EFFECT ON THE OBJECTIVES OF THAT MANDATE

Petitioner's preceding five points are hereby incorporated in this as supporting argument that N.T.'s excusal was proper according to the excusal statute that takes precedence over N.J.S.A. 18A:4-28.7. The question that comes to mind here is what difference does it make to the state whether or not N.T. goes to drug education class, particularly when her mother wants her to be withdrawn on grounds of conscience. This should indicate to the state that a mother is reclaiming her prerogative to educate her daughter in this field herself. She wants to guarantee that her daughter does not use drugs and knows nothing at all about the

occasion of sin caused by knowing the technical details about how to use drugs. On the basis that it has just gained a dedicated "volunteer" teacher in the prevention of drug taking students, the state should be pleased by such excusal and its probable effect.

Conclusion

For the above reasons, petitioner respectfully requests that the Commissioner construe the provisions of N.J.S.A. 18A:35-4.7 and declare the petitioner be granted the relief sought in accordance with the prayer as requested in the Petition for Declaratory Judgment.

Respondent Board's Position

N.J.S.A. 18A:35-4 mandates that a course on "the nature of alcoholic drinks and narcotics and their effects upon the

human system shall be taught in all schools... Each board of education shall make provisions in its annual education program to fulfill this requirement..." The Legislative history shows compelling reasons for the enactment of the statute:

> An important aspect of the problem of alcohol abuse by children and youths concerns the education provided to them on the nature and effects of alcoholic beverages and alcoholism and the handling of alcohol-related problems in the schools. If children and youths are to develop responsible attitudes and habits relative to use of alcoholic beverages in a society where such use is widespread and misuse is encouraged to some extent, then effective instructional programs on the use of alcoholic beverages and all dangers of their misuse are essential. Since school attendance is required for children and youths, schools provide an ideal place for identifying poor habits or attitudes for alcohol-related problems in children and youths, and for attempting to provide for early remedies for these habit, attitudes or problems to the extent possible in the educational environment.

The statute makes the course required. School officials, must, therefore, exercise caution when permitting withdrawal from the course.

N.J.S.a. 18A:35-4.7 is known as the "excusal clause" and provides: "Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family education and sex education is in conflict with his conscience or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom" (emphasis added). This statute permits a parent to withdraw a child from any portion of a course which is in conflict with conscience or sincerely held moral or religious beliefs.

School officials must comply with the requirements of both statutes. It is their responsibility to determine if withdrawal of a student from a drug education course required by statute meets the criteria which allows the withdrawal.

The purpose of the drug education course is to make the child aware of the dangers associated with alcohol and drug abuse and to help them avoid these dangers. Drug education is not like the area of sex or religious education. Moral views and religious belief play a large part in the education of a child in the areas of family life or sex. Moral views do not vary when it comes to drug or alcohol abuse: everyone agrees it is wrong. It is, therefore, difficult to see how teaching a child that drug and alcohol abuse is wrong can be in conflict with his conscience or sincerely held moral or religious beliefs."

The New Jersey Supreme Court case Smith v. Ricci, 89 N.J. 514 (1982), dealt with the constitutionality of the State Board of Education regulation requiring local school districts to develop and implement a family life education program. In upholding the regulation, the Court referred to an excusal clause which is analogous to the excusal clause contained in N.J.S.A. 18A:35-4.7. The Court stated, "under the excusal policy people will receive instruction in all aspects of the family life education program unless a parent or guardian objects. In such case, people will be excused, but only from those parts of the program that the parent finds morally, conscientiously, or religiously objectionable." This indicates that there must first be a finding of what specific part of the material that is being taught is offensive. This also indicates that it must be determined why it is

morally, conscientiously or religiously objectionable so that, thereafter, it can be determined what portion the child should not be exposed to.

In petitioner's own brief, it [is] stated that "principal evidenced a certain unreasonableness in ignoring and refusing to honor a medical request for excusal from the same class by Dr. Shim because of traumatic symptoms brought on by her forced attendance at certain of the Drug Education classes." This is also an indication that perhaps not the entire program was having an effect upon the child. The medical excuse from Dr. Shim, moreover, provided an excuse for only one week.

Respondent Board states that S.T. had made statements that "research has shown these courses are permeated with the philosophy of secular humanism, which is diametrical [sic] opposed to the Judeo-

Christian principles to which we ascribe"; "the course teaches what we believe is sinful; and the course contains "scandalous material." These statements does not provide any basis for withdrawal from the drug/alcohol abuse classes based on a conflict with conscience or "sincerely held moral or religious beliefs." It was impossible for the school to determine from the general reasons given by S.T. if the entire drug class was offensive or if there was some way the offensive portions of the class could be remedied and the school could still fulfill its obligation under the statute to provide the mandated drug/alcohol course. The concern, as expressed by the appellants in Smith regarding a required family life educational program, was that children would be exposed to attitudes, goals and values that are contrary to their own and to those of their parents and will

thereby be inhibited in the practice of their religion. It is hard to see how this concern could apply to teaching drug/alcohol prohibitions.

Respondent Board further asserts that there has been no showing whatsoever by S.T. that the material in the drug education class violates her constitutional rights. The fact that the films made her daughter sick is not sufficient. She must show that the reasons asserted are applicable to the drug education program; this she has not done.

The school officials have requested on several occasions that S.T. provide them with specific portions of the drug program she finds offensive. This she has refused to do. Parents are given the right to examine textbooks and materials used in connection with the courses, but S.T. has not chosen to review the materials and

indicate which are offensive. Mr. Elliott has provided S.T. with numerous opportunities to discuss the matter with him, but S.T. has chosen to ignore these opportunities.

N.J.S.A. 18A:36-15 permits the Board of Education to excuse a child from school for a religious holiday. In a recent case, the judge found that the statute itself permitted inquiry as to the sincerity of religious beliefs and such an inquiry was not prohibited by the First Amendment. Carlin v. Bd. of Ed. of the Union Co. Reg. H.s. Dist. No.1, OAL DKT. EDU 3309-85 (October 29, 1985).

Likewise, the statute in the present case, N.J.S.A. 18A:35-4.7, permits an inquiry as to whether there is a conflict with a "sincerely held moral or religious belief." School officials were entitled to make this inquiry and to receive a response.

It is not unreasonable for school officials, when attempting to fulfill their obligations under the law, to request information vital to their decision. Previous requests by S.T. for withdrawal of N.T. from non-required courses have been honored by Mr. Elliott. However, the school can not ignore a statute which requires that drug/alcohol abuse courses be taught without first determining if there is a legitimate reason based on a moral or religious belief for doing so.

Conclusion

For the above-stated reasons, respondents respectfully request that the Commissioner deny the relief sought in the Petition for Declaratory Judgment and require petitioner to provide the specific

portions of the drug education program to which she objects and the reasons for her objections so that appropriate determinations can be made by respondents.

DISCUSSION, CONCLUSIONS AND ORDER

Petitioner invokes N.J.S.A. 18A:35-4.7 to demand that the statutory excusal policy embodied therein be applied to remove and withdraw her daughter, N.T., from the Board's statutorily required drug education program, as mandated by N.J.S.A. 18A:35-4 and, more specifically, N.J.S.A. 18A:4-28.7. The mandatory drug education program was enacted by the New Jersey Legislature under Chapter 85, Laws of 1970 and codified as N.J.S.A. 18A:4-28.4, et seq. The pertinent parts of the statute are recited hereinbelow as follows:

N.J.S.A. 18A:4-28.4 Definitions

As used in this act:

a. "Drug education program" means a factual presentation of the problems of drug abuse involving young people prepared so as to be effective and appropriate for student consumption.

b. "Secondary school" means grades seven through 12 and shall include high school grades, junior high school grades and any other classification of grades designated in a particular school to include grades five and above.

c. "Recommended drug education unit" means the subject matter of the drug education program to be presented to the students.

d. "Drugs" means and includes narcotic drugs, dangerous drugs, and controlled dangerous substances, as defined in the laws of the State of New Jersey and the laws of the United States.

e. "School district" means public school districts and shall included regional and vocational school districts.

N.J.S.A. 18A:4-28.5, summer workshops and training programs, authorized and directed the Commissioner of Education to

establish summer workshops and training programs to train selected teachers to teach a drug education program to secondary school teachers. The purpose of the section was the development of a curriculum and to incorporate the recommended drug education unit into the ongoing health education curriculum of students in the state's secondary schools. The statute continues to provide that: "...The programs shall contain basic content on the history, pharmacology, physiology and psycho-social aspects of drugs generally abused by young people, treatment and rehabilitation programs, the legal aspects of drugs and the extent of drug abuse in New Jersey."

Section 4 of L. 1970, c. 85, codified as N.J.S.A. 18A:4-28.7, Drug education unit, secondary school health curriculum, provides that:

On and after January 15, 1971, each

> school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades.

The Legislature made no provision to excuse secondary school pupils from the drug education program. Rather, the Legislature explicitly requires the Board to provide, without exception, a minimum of 10 clock hours of drug education to each secondary school pupil under the Board's direction an control. As was said by the Court in Rice v. Union Cty. Reg. H.S. Bd. of Ed., 155 N.J. Super. 64, 72 (App. Div. 1977), "We must presume that the Legislature knew what it was doing and did not intend to establish a useless procedure (citations omitted)."

The statute upon which petitioner relies and invokes as the basis to remove

N.T. from the Board's mandatory drug education program, N.J.S.A. 18A:35-4.7, was enacted by the Legislature under Chapter 428, Laws of 1979, and was effective approximately ten years subsequent to the enactment of N.J.S.A. 18A:4-28.7. It is known as the "Parents Rights to Conscience Act of 1979." N.J.S.A. 18A:35-4.6, providing for pupil excusal from certain instruction at N.J.S.A. 18A:35-4.7 as follows:

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from the portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

A historical review of the statute, N.J.S.A. 18A:35-4.7, reveals that the Legislature considered the inclusion of the mandatory drug education program as a portion of instruction for which a pupil might be excused if in conflict with his/her conscience or sincerely held moral or religious beliefs. The Legislature rejected this notion, however, and omitted drug education as a program from which pupils can be excused under N.J.S.A. 18A:35-4.7.

The bill formally introduced on January 25, 1979, by Senator Yates and identified as Senate No. 3071, was subsequently referred to the Senate Law, Public Safety and Defense Committee (Senate Committee). On April 5, 1979, the Senate Committee issued its Statement to Senate, No. 3071, with senate committee amendments, which stated:

This bill would permit parents to

> submit a signed statement excusing their children from any portion of instructions on health, family life education or sex education which is in conflict with their conscience or their moral or religious belief, and under certain circumstances allowing them to be excused from medical examinations or treatment they find offensive to such principals. The committee amended the bill to eliminate drug education from the list of courses from which the children could be excused. (emphasis added)

Subsequently, on November 26, 1979, "The Assembly Education Committee favorably reports this bill and endorses the statement of the Senate Education Committee: (Assembly Education Committee Statement to Senate, No. 3071, Dated November 26, 1979).

On February 2, 1980, Senate Bill No. 3071, was enacted into law by the Legislature was amended by the Senate Committee. The legislation was codified as N.J.S.A. 18A:35-4.6; N.J.S.A. 18A:35-4.7; and N.J.S.A. 18A:35-4.8, effective immediately without reference to the

mandatory drug education or instruction or a pupil excusal provision therefrom. It is presumed that the Legislature knew what it was doing. Rice, supra.

Given these historical facts and circumstances, this administrative tribunal can apply no other construction to the statute then that intended by the Legislature. In construing a statute, the initial task of the court is to seek the legislative intent, and to that end it must consider any history which may be of aid. Roman v. Sharper, 53 N.J. 338 (1969), State v. Madden, 61 N.J. 377 (1972). Generally, a court's duty in construing a statute is to determine the intent of the Legislature. AMN, Inc. of N.J. v. So. Burnswick Tp. Rent Leveling Bd., 93 N.J. 518 (1983). Having considered the statute, N.J.S.A. 18A:35-4.6, together with its legislative history, I FIND and CONCLUDE that the Legislature did

not intend to include the statutorily mandated drug education program as one to which pupils may be excused therefrom. The Legislature clearly and explicitly manifested its intent, through the adoption of the amendment to "eliminate drug education from the list of courses from which the children could be excused." Senate Law, Public Safety and Defense Committee, Statement to Senate, No. 3071, April 5, 1979.

Therefore, I FIND AND CONCLUDE that N.J.S.A. 18A:35-4.6 is inapplicable to warrant an excuse from any portion of the Board's drug education program as mandated by N.J.S.A. 18A:4-28.7.

No opinion is expressed, nor decision made, on the question of whether or not petitioner's rights to freedom of religious expression have been violated or abridged, under the First Amendment to the United

States Constitution, as alleged.

Accordingly, it is hereby DECLARED that the Board of Education of the City of Millville is under a duty to comply with the statutory provisions of N.J.S.A. 18A:4-28.7 and to provide a minimum of ten (10) clock hours of drug education per year to the pupils under its direction and control, pursuant to its adopted and approved health education curriculum.

It is further DECLARED that pupil excusal from certain portions of the Board's health curriculum, under N.J.S.A. 18A:35-4.7, is inapplicable to the statutory requirements as mandated by N.J.S.A. 18A:4-28.7.

Consequently, it is hereby ORDERED that all pupils under the Board's direction and control who are subject to N.J.S.A. 18A:4-28.7 be required, without exception, to complete successfully a minimum of ten (10)

clock hours of instruction in drug education.

This recommended decision may be affirmed, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, SAUL COOPERMAN, who by law is empowered to make a final decision in this matter. However, if Saul Cooperman does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with SAUL COOPERMAN for consideration.

16 January 1986 Lillard E. Law, ALJ

Receipt Acknowledged

Jan. 17 1986 Department of Education

Mailed to Parties:

Jan. 21 1986 Office of Administrative Law

ij/ee

## COMMISSIONER OF EDUCATION DECISION

The Commissioner has reviewed the record of this matter including the initial decision rendered by the Office of Administrative Law.

Petitioner's exceptions argue four points:

First, petitioner avers that the initial decision is erroneous and incomplete. Petitioner states in exceptions that it is not necessary to construe a statute for legislative intent if it is clear on its face and that N.J.S.A. 18A:35-4.7 requires no interpretation as to the courses from which pupils may be excused. Petitioner avers that the statute does not need to be construed as to whether the drug education program was included in the statute because the health course, as mandated by N.J.S.A. 18A:4-28.7, clearly includes drug education. Even assuming arguendo, that the statute

does require some interpretation, petitioner argues that the conclusion of the ALJ that:

> *** The legislature clearly and explicitly manifested its intent through the adoption of the amendment to eliminate drug education from the list of courses from which the children could be excused.

Petitioner suggests that the course in drug education might have been omitted to eliminate a minor tautology in the statute since the drug education program was already included, having been mandated in the health education curriculum by N.J.S.A. 18A:4-28.7. Further, since the Governor's announcement of the bill's enactment did not mention exceptions to the bill, petitioner strongly disagrees with the ALJ that the Legislature manifested an intent which in any way contradicts the express wording of the statute.

Petitioner further argues the decision is incomplete in that it fails to rule on the possible violation of a federal constitutional question raised by petitioner which "cries out to be settled." (Exceptions, at p.4) Petitioner avows that the question of a citizen's constitutional right under the Federal Constitution should take precedence over an erroneous and unnecessary interpretation of the statute in question. Petitioner posits that the drug education course must have been omitted in error, and she again raises the issue to be settled as she sees it, to wit: "Does the mandating of the factual presentation of the problems of the vice of drug abuse to a class of immature young students violate the free exercise of religion where there is objection for reasons of conscience based on the scandal inherent in the subject matter." (Exceptions, at p.5)

Petitioner also faults the ALJ for failing to discuss the connection between N.J.S.A. 18A:35-4.7 and the decision in Smith v.Ricci, 89 N.J. 514 (1982), which she avers, legitimatized the State law mandating sex education in the public schools in the face of its possible violation of the right to free exercise of religion. Petitioner argues that where there is a claim of a constitutional right about a drug education class of the health curriculum and there is a statutory basis for it, the pupil must be excused or, if not, the issue must be addressed by the tribunal, giving reasons therefore.

Petitioner's second point of exception is that respondents argument that school officials must comply with the requirements of both statutes -- the drug education program and the parents' right to conscience act, the latter of which calls for some

further determination before excusal will be allowed -- is erroneous. Petitioner avows that since the right to conscience act was enacted after the mandatory drug education program, under the statutory rules of construction (N.J.S.A. 1:1-1), it takes precedence. Therefore, petitioner avers, respondents are relieved from their difficult task of trying to comply with both statutes in regard to the excusal provision of lack thereof and need to look only to the later statute for their excusal criteria.

Petitioner's third point of exception states that respondents claim that, before excusal there must be a specific finding and determining relative to the religious offensiveness of the teaching of drug education is erroneous and smacks of excessive entanglement between government and religion.

Petitioner contends that respondents are implying from the statute and administrative religious test that is not there; that is, that a part of the portion of the program must be dissected in detail and a secular determination be made as to what are proper religious objections. Petitioner reiterates that she has met all statutory requirements and to inquire into why any specific part of the portion is objectionable can only be perceived as a circumvention of the spirit and letter of the law which was enacted to protect individual constitutional rights. Petitioner further reiterates that the statute is silent as to the requests for excusal having to pass any specific tests by local or state bureaucracies prior to excusal and for respondent s to require that petitioner show why the material is morally objectionable would go a "long way down the road toward excessive entanglement between

government and religion which is impermissible under the United States Constitution." (Exceptions, at p.9) Petitioner cites Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed. 2d 745, 91 S.Ct. 2105 (1971).

Finally, relative to petitioner's Points Three and Four of her post-hearing brief, since no argument was offered to them and they were not addressed in the initial decision, it is petitioner's position that they stand uncontroverted. Petitioner requests that the commissioner deny the recommended decision and grant the relief sought in the Petition of Appeal for Declaratory Judgment.

Upon review of the record in this matter, the Commissioner concurs with the judge's determination that "pupil excusal from certain portions of the Board's health curriculum, under N.J.S.A. 18A:35-4.7, is inapplicable to the statutory requirements

as mandated by N.J.S.A. 18A:4-28.7" (Initial Decision, at p. 24) for the following reasons.

While the commissioner concurs with petitioner that drug education, as part of the health education program, would appear to be one of the portions of the program for which a student may be excused because it is in conflict with the parent's moral or religious beliefs under N.J.S.A. 18A:35-4.7, the Legislature, in its wisdom, intended otherwise. The Senate Committee's Statement to Senate No. 3071, which accompanied the amended bill later enacted as N.J.S.A. 18A:35-4.7 states:

> *** The committee amended the bill to eliminate drug education from the list of courses from which the children could be excused.

The Commissioner finds no merit in petitioner's argument that the omission of

drug education from among the list of courses for which a student may be excused "might have been omitted to eliminate a minor tautology in the statute since the drug education program was already included, having been mandated in the health education curriculum by N.J.S.A. 18A:4-28.7." (Exceptions, at p. 3) Had this been the Legislature's intent it could have indicated that such excusal should take place notwithstanding the mandate of N.J.S.A.18A:4-28.7. Since no such statement was included in the Senate Committee's Statement, "we must presume that the Legislature knew what it was doing and did not intend to establish a useless procedure. (citations omitted)." Rice v. Union Cty.Reg. H.S. Bd. of Ed., 15 N.J. Super. 64, 72 (App.Div. 1977)

In further support of the AlJ's determination, the Commissioner takes note

of the passage of the legislation entitled, "Course in nature and effect of alcoholic drinks and narcotics", N.J.S.A. 18A:35-4, which became effective one month before N.J.S.A 18A:35-4.7, which includes Assembly Judiciary, Law, Public Safety and Defense Committee Statement, Assembly No. 3260 - L.1979, c.263, which states, in pertinent part:

> *** If children and youths are to develop responsible attitudes and habits relative to use of alcoholic beverages in a society where such use is widespread and misuse is encouraged to some extent, then effective instructional programs on the use of alcoholic beverages and on the dangers of their misuse are essential. Since school attendance is required for children and youths, schools provide and ideal place for identifying poor habits or attitudes or alcohol-related problems in children and youths, and for attempting to provide early remedies for these habits, attitudes or problems to the extent possible in the educational environment.

This legislative statement makes it entirely clear that children shall be

educated regarding the dangers of alcohol and narcotics abuse. So strong a mandate, coupled with the exclusion from N.J.S.A. 18A:35-4.7 of drug education language, which bill was enacted just one month after N.J.S.A.18A:35-4, leaves no doubt whatsoever in the Commissioner's mind that the Legislature fully intended that children and youths in public schools of New Jersey shall be provided a course in drug education without excusal.

As to petitioner's argument that "the Decision is incomplete in that it fails to rule on the possible violation of a federal constitutional question" (Exceptions, at p. 4), the constitutionality of a statute may not be decided by the Commissioner. See George B. Thorp v. The Board of Trustees of Schools for Industrial Education - Newark College of Engineering, 1949-50 S.L.D, 61,62, aff'd St. Bd. 1959-51 S.L.D. 70,

aff'd 6 N.J. 948 (1951). See also Frank Giandomenico v. Board of Education of the Township of Winslow, 1975 S.L.D. 258, 260.

Further, the Commissioner notes that Smith v. Ricci, supra, is inapposite to the instant matter in light of the Legislature's clear intent to exempt drug education from the courses for which a pupil might be excused because of conscience. To analogize that because the Court in Smith held that exemptions are available pursuant to N.J.S.A. 18A:35-4.7 in the areas of sex education and family life, that similar exemption is required in the area of drug education is irrelevant when the Legislature has stated that drug education is not a course for which such an excuse is available.

Accordingly, for the reasons stated herein, as well as for those recited by the ALJ, the commissioner affirms the findings

and conclusions of the initial decision. The Commissioner finds that the Board of Education of the City of Millville is under a duty to comply with the statutory provisions of N.J.S.A. 18A:4-28.7 and to provide a minimum of ten (10) clock hours of drug education per year to the pupils under its direction and control, pursuant to its adopted and approved health education curriculum.

The Commissioner further finds that pupil excusal from certain portions of the Board's health curriculum under N.J.S.A 18A:35-4.7 is inapplicable to the statutory requirements as mandated by N.J.S.A. 18A:4-28.7. Finally, the Commissioner hereby directs that all pupils under the Board's direction and control who are subject to N.J.S.A. 18A:4-28.7 be required, without exception, to complete successfully a minimum of ten (10) Clock hours of

instruction in drug education.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

STATE BOARD OF EDUCATION
DECISION

Decided by the Commissioner of Education, February 25, 1986

For the Petitioner-Appellant, Joseph F. Shanahan, Esquire

For the Respondents-Respondents, Jacob and Robinson

(Frederick A. Jacob, Esquire, of Counsel)

This case involves the issue of whether the Parents Rights to Conscience Act of 1979, N.J.S.A. 18A:38-4.6 et seq., applies to a district board's drug education course mandated by N.J.S.A. 18A:4-28.7 so as to require a student's excusal from the course where the parent presents that the course

conflicts with his conscience or sincerely held moral or religious beliefs. The Petitioner in this case is the mother of a high school student, who requested of the Principal that her daughter be immediately withdrawn from the drug education course[1] because

> ...research has shown that these courses are permeated with the philosophy of secular humanism, which is diametrically (sic) opposed to the Judeo-Christian principles to which we ascribe...

Petitioner supplemented this request with a letter reiterating her concern that her "...constitutional right to free exercise of [her] religion is being offended by forcing [her] daughter to take a course which teaches what we believe to be sinful." This letter was followed by a form letter

[1] Petitioner also requested withdrawal from psychology. However, attendance at that course is not an issue in this case.

again expressing Petitioner's objection that drug education violated her religious and moral beliefs.

The Principal declined to excuse Petitioner's daughter from the course, observing that Petitioner had refused to follow the Board's procedures by providing an outline of those sections of the text and/or the drug education curriculum to which she objected and the reasons why those sections were objectionable. On October 18, 1985, the County Superintendent responded to Petitioner's request by setting forth the statutory provisions applicable to the situation. Petitioner then filed a Petition for Declaratory Judgment with the Commissioner of Education.

The matter was transmitted to the Office of Administrative Law as a contested case. Before the pre-hearing conference was held, the parties entered a consent agreement

whereby Petitioner's daughter would be excused from the second semester of drug education if the Commissioner had not rendered his decision when the semester started.

The Administrative Law Judge (ALJ) then considered the merits of the case. In his Initial Decision, he found that when the Legislature mandated that each school district incorporate into its health program the recommended drug education unit for a minimum of ten hours per school year, it made no provision to excuse pupils from the program. He further concluded that N.J.S.A. 18A:35-4.7, which provides for pupil excusal from certain instruction and which had been enacted ten years after drug education was mandated by the Legislature, did not apply to the drug education course. In reaching this conclusion, the ALJ relied on the Senate Committee's Statement, which stated

that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. Although expressing no opinion concerning whether Petitioner's rights to religious expression under the United States Constitution had been violated, the ALJ declared that the Board was under a duty to provide a minimum of ten hours of drug education a year to its students as part of the health curriculum, and that all of those students are required without exception to successfully complete a minimum of ten hours of instruction in drug education.

The Commissioner concurred with the ALJ's determination that N.J.S.A 18A:35-4.7 is inapplicable to the drug education course mandated by N.J.S.A. 18A:4-28.7. Although he agreed with Petitioner that, since it is part of the health program, drug education would appear to be one of the portions of

the program from which students could be excused pursuant to N.J.S.A. 18A:35-4.7, the Commissioner, like the ALJ, relied on the Senate Committee's Statement to conclude that the Legislature did not intend that the Parents Rights to Conscience Act of 1979 apply to the drug education course. In reaching this conclusion, the Commissioner placed... [words illegible]
...based on the Committee Statements, the Commissioner concluded that the Legislature fully intended that children in the public schools shall be provided a course in drug education without excusal.

Like the ALJ, the Commissioner declined to resolve the constitutional claim involved in this case, determining that he did not have the authority to decide the constitutionality of a statute. He, however, found that the courts' holding in Smith v. Ricci, 89 N.J. 514 (1982), was

inapposite in resolving such claims since, in contrast to sex education and family life, the Legislature had stated that excusal from drug education is not available.

In sum, the Commissioner found that the Board was under a duty to provide ten hours of drug education per year and that pupil excusal pursuant to N.J.S.A. 18A:35-4.7 was inapplicable to the drug education course. He therefore directed that all students subject to N.J.S.A. 18A:4-38.7 be required without exception to successfully complete a minimum of ten clock hours of instruction in drug education. For the reasons that follow, we reverse the Commissioner's decision.

The threshold question in this case is whether N.J.S.A. 18A:35-4.7 is applicable to the District's drug education course, which is mandated by N.J.S.A. 18A:4-28.7.

N.J.S.A. 18A:35-4.7, which is part of the Parents Rights to Conscience Act of 1979, provides that

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from the portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

Thus, the words of the statute mandate that, upon presentation of a signed statement that any part of the instructions in health, family life or sex education conflicts with a parent's conscience or beliefs, the student must be excused from that part of the course without penalty.

In turn, N.J.S.A.18A:4--28.7 mandates that each district having secondary school grades must incorporate into its health education curriculum the recommended drug

education unit for a minimum of ten hours per school year as part of the ongoing health education curriculum for secondary school grades.[2] Thus, the words of the statute mandate that the drug education unit be included as part of every district's instruction in health, and preclude offering the unit as part of another area of instruction. Further, although mandating that every district provide drug education, the words of the statute do not require that every student without exception complete the unit.

It is well established the meaning of a

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[2] The recommended unit includes the following components: information about chemical substances, skill development aimed at establishing personal priorities, promotion of personal identity, coping skills, attitudes and values that influence a student's decisions about a choice of behavior, interpersonal skills, alternative activities, group skills and a healthy school climate. NEW JERSEY DEPARTMENT OF EDUCATION, DESK REFERENCE MANUAL OF STUDENT DRUG AND ALCOHOL USE: A COMPREHENSIVE PLANNING GUIDE (1985).

statute first must be sought in the language of the statute. Sheeran v. Nationwide Mut. Ins. Co., Inc. 80 N.J. 548 (1979). If the language of a statute is clear and unambiguous on its face, we may not go beyond the words of the statute in order to define the Legislature's intent. State v. Butler, 89 N.J. 220 (1982). In such cases, the language of the statute is the full expression of what the Legislature intended, and although legislative history may be utilized to provide reassuring confirmation of literally apparent meaning, e.g., Gauntt v. City of Bridgeton, 194 N.J. Super. 468 (App. Div. 1984), extrinsic materials may not be used to create ambiguity or to determine that the Legislature intended, something other than that which it actually expressed. Safeway Trails, Inc. v. Furman, 41 N.J. 467, (1964), appeal dismissed and cert. denied, 379 U.S. 14; Gauntt v. City

of Bridgeton, supra. We find that the words of the statutes involved here are clear and unambiguous, and that application of the language of each neither results in conflict between them nor leads to absurd or anomalous results. Robson v. Rodriguez, 26 N.J. 517 (1958).

On it face, N.J.S.A. 18A:35-4.7 mandates excusal as specified in the statute from any part of the instruction in health, and there is no provision in the statute exempting any part of the health curriculum from the terms of the statute. As stated, N.J.S.A. 18A:4-28.7 clearly mandates that the drug education unit be as part of the health education curriculum. Thus, the language of N.J.S.A. 18A:35-4.7 would require excusal from the drug education unit mandated by N.J.S.A. 18A:4-28.7 under the conditions prescribed by N.J.S.A. 18A:35-4.7 if no exception was made for drug education. Our

review of the statutory language fails to reveal such exception. As stated, N.J.S.A. 18A:4-28.7 mandates only that each student complete the unit.

Nor does consideration of the legislative history of the applicable statutes alter our conclusion that N.J.S.A. 18A:35-4.7 requires excusal of a student from the drug education part of the health curriculum where the parent presents that this part of the instruction in health conflicts with his conscience or sincerely held moral or religious beliefs. The Committee Statement that accompanied the bill that was enacted as N.J.S.A. 18A:35-4.7 stated that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. However, since N.J.S.A. 18A:4-28.7 mandates that the drug education unit be incorporated as part of every

district's health curriculum and since instruction in health was specified as subject to excusal by N.J.S.A. 18A:35-4.7, it was not necessary that the Legislature specifically list the drug education unit in the statute in order for that statute to apply to drug education. We therefore can not read the Committee's Statement to eliminate drug education from the courses specifically listed in the statute as an unambiguous statement that it intended to exempt drug education from the N.J.S.A. 18A:35-4.7.

Nor does the Committee Statement accompanying amendment to N.J.S.A. 18A:35-4 (amended 1980) conflict with the application of N.J.S.A. 18A:35-4.7 to drug education. As set forth above, that statement emphasizes the importance of effective instructional programs on the use of alcoholic beverages to the development

of responsible habits and attitudes in the use of such beverages. Although the State Board shares the Legislature's view concerning the importance of instructional programs on alcoholic beverages, and endorses the Legislature's commitment, as expressed in N.J.S.A. 18A:4-28.7, to insure the provision of similar instructional programs on drugs, we can not construe either the committee Statement accompanying amendment to N.J.S.A.18A:35-4 or the statutes mandating that each district provide instruction on these subjects as clear expression that, despite the words of N.J.S.A. 18A:35-4.7, the Legislature intended to exempt drug education from the application that statute. In the absence of clear and unambigous indication that the Legislature intended to exempt the drug education unit from excusal pursuant to N.J.S.A. 18A:35-4.7, we may not legislate

such exception. c.f., Department of Environmental Protection v. Franklin Tp., 181 N.J. Super. 309 (Tax Ct. 1981).

As set forth above, we conclude that the language of N.J.S.A. 18A:35-4.7 requires that upon presentation of a signed statement by the parent or guardian of a student that the part of the instruction in health designated as drug education conflicts with his conscience or sincerely held moral or religious beliefs, the student must be excused from that instruction without penalty. Petitioner's request for the excusal of her daughter from drug education meets the requirements of N.J.S.A. 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug education part of its health curriculum without penalty.

In so finding, we emphasize that the State Board is committed to fulfilling the mandate of N.J.S.A. 18A:4-28.7, and responsible habits and attitudes in the use of such beverages. Although the State Board shares the Legislature's view concerning the importance of instructional programs on alcoholic beverages, and endorses the Legislature's commitment, as expressed in N.J.S.A. 18A:4-28.7, to insure the provision of similar instructional programs on drugs, we can not construe either the Committee Statement accompanying amendment to N.J.S.A. 18A:35-4 or the statutes mandating that each district provide instruction on these subjects as a clear expression that, despite the words of N.J.S.A. 18A:35-4.7, the Legislature intended to exempt drug education from the application of that statute. In the absence of clear and unambiguous indication that the Legislature

intended to exempt the drug education unit from excusal pursuant to N.J.S.A. 18A:35-4.7, we may not legislate such exception. c.f., Department of Environmental Protection v. Franklin Tp., 181 N.J. Super. 309 (Tax Ct. 298).

As set forth above, we conclude that the language of N.J.S.A. 18A:35-4.7 requires that upon presentation of a signed statement by the parent or guardian of a student that the part of the instruction in health designated as drug education conflicts with his conscience or sincerely held moral or religious beliefs, the student must be excused from that instruction without penalty. Petitioner's request for the excusal of her daughter from drug education meets the requirements of N.J.S.A. 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug

education part of its health curriculum without penalty.

In so finding, we emphasize that the State Board is committed to fulfilling the mandate of N.J.S.A. 18A:4-28.7, and strongly holds that participation in the mandated instruction on the subject of drugs and their abuse is essential in order that each student may develop the ability to avoid drug abuse. However, we reiterate that we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of the statute. e.g., Guantt v. City of Bridgeton, supra. We further emphasize that our application of N.J.S.A. 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant the statute.

Finally, we, like the Commissioner, emphasize that we do not have jurisdiction to determine the constitutional claim made by Petitioner. Reed by Through Reed v. Attorney General, 195 N.J. Super. 172 (App. Div. 1984); Paterson Redevelopment Agency v. Schulman, 78 N.J. 378 (1879). However, in light of our conclusion concerning the applicability of N.J.S.A. 18A:35-4.7 to drug education as mandated by N.J.S.A. 18A:4-28.7, we need not consider the question of whether Petitioner's right to the free exercise of religion under the United States Constitution would be violated had the Legislature required that all students in the public schools complete the mandated drug education unit without exception.

For the reasons set forth above, we reverse the Commissioner's decision. In doing so, we find that oral argument is not necessary in order for us to arrive at a

fair resolution of this case and, therefore, deny the Board's motion for oral argument, Which it filed after it submitted its exceptions to our Legal Committee's Report in this matter.

Alice Holzapfel opposed.

Attorney exceptions are noted.

Date of Mailing: December 3, 1986

Supreme Court, U.S.
FILED
MAY 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1753

In The

# Supreme Court of the United States

October Term, 1988

S.T., ON BEHALF OF HER MINOR CHILD, N.T.,
*Appellant,*

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,
*Appellees.*

**On Appeal From The Appellate Division, Superior Court of New Jersey**

## MOTION OF APPELLEE NEW JERSEY STATE BOARD OF EDUCATION TO DISMISS OR AFFIRM

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31pp

## I. QUESTION PRESENTED

1. Whether this appeal is moot because the statute at issue requiring 10 hours of drug education as part of the health curriculum has been repealed.

2. Whether the determination that S.T. had a state statutory right to have her daughter excused from drug education is an adequate nonfederal ground to support the decision of the Appellate Division, New Jersey Superior Court, so that there is no reason for this Court to consider her First Amendment claim.

## II. TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

TABLE OF AUTHORITIES ..... iv

COUNTER-STATEMENT OF THE CASE ..... 2

ARGUMENT:

The Question Presented By The Appellant, Whether The Mandating Of Her Daughter Into A Drug Education Program Violated Her First Amendment Rights, Was Never Considered By The Courts Below And Need Not Be Reached Here Because The Appellant Received The Relief She Sought Based On State Statutory Grounds; Moreover, The Appellate Division's Judgment Correctly Determined That The Appeal Was Moot, As The Statute Mandating The Course At Issue Had Been Repealed ..... 7

A. The administrative agency acknowledged that S.T. had a state statutory right to have her daughter excused from the objectionable course and the Appellate Division concluded that any further appeal by the Board was made moot by the repeal of the statute at issue requiring her to be in that course; both determinations constitute adequate non-federal grounds, so that there is no need to decide the constitutional issue. ..... 8

B. The issue of whether a mandated drug education course violates First Amendment rights was not raised before the Appellate Division, whose decision is at issue herein, nor did any court ever pass on the question. ..... 10

TABLE OF CONTENTS

Page

C. The appellant erred when she filed this appeal pursuant to 28 *U.S.C.* § 1257(2) because she never challenged the constitutionality of a statute, nor did the court below uphold a state statute in the face of a constitutional challenge when it declared this matter moot because the statute at issue had been repealed. ..... 12

D. S.T. is asking this court to decide a matter which is not a controversy because no one as yet has sought to be excused from the mandates of *N.J.S.A.* 18A:40A-1 *et seq.* ..... 13

CONCLUSION ..... 15

APPENDIX:

A. *S.T., on behalf of her minor child, N.T., v. Board of Education of the City of Millville, Cumberland County, and Warren E. Elliott, Principal of Millville Senior High School,* State Board of Education decision, December 3, 1986. ..... A-1

# TABLE OF AUTHORITIES

Page

CASES CITED

*Addington v. Texas*, 441 *U.S.* 418 (1979) ..... 12

*American Book Co. v. Kansas*, 193 *U.S.* 49 (1903) ..... 10

*Board of Flour Inspectors v. Glover*, 160 *U.S.* 170 (1895) ..... 10

*Doremus v. Board of Education*, 342 *U.S.* 429 (1951) ..... 9

*Ferry v. King County*, 141 *U.S.* 668 (1891) ..... 12

*Loudon v. Taxing District of Shelby County*, 104 *U.S.* 771 (1880) ..... 9

*McQuaid v. Trenton*, 172 *U.S.* 636 (1898) ..... 9

*Paterson Redevelopment Agency v. Schulman*, 78 *N.J.* 378 (1979) ..... 11

*Rogers v. Jones*, 214 *U.S.* 196 (1908) ..... 10

*Santa Cruz County v. Santa Cruz R. Co.*, 111 *U.S.* 361 (1883) ..... 10

*Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 *U.S.* 498 (1910) ..... 14

STATUTES CITED

*N.J.S.A.* 18A:4-28.7 ..... *passim*

*N.J.S.A.* 18A:6-9 ..... 3

*N.J.S.A.* 18A:35-4.5 ..... 5

*N.J.S.A.* 18A:35-4.6 ..... 3

*N.J.S.A.* 18A:35-4.7 ..... *passim*

*N.J.S.A.* 18A:35-7.4 ..... 7

*N.J.S.A.* 18A:40A-1 ..... 5, 13

*N.J.S.A.* 52:14F-1 ..... 3

28 *U.S.C.* § 1257(2) ..... 6, 12, 13

TABLE OF AUTHORITIES—Continued

Page

RULES CITED

Rule 16(1)(b) ..... 1, 8, 10, 12
Rule 16(1)(d) ..... 1
Rule 17.1(a) ..... 13
Rule 17.1(b) ..... 13
Rule 17.1(c) ..... 13

LAWS CITED

*L.* 1987, *c.* 389 ..... 5

UNITED STATES CONSTITUTION CITED

First Amendment ..... *passim*

No. 88-1753

In The

# Supreme Court of the United States

October Term, 1988

S.T., ON BEHALF OF HER MINOR CHILD, N.T.,
*Appellant,*

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,
*Appellees.*

**On Appeal From The Appellate Division, Superior Court of New Jersey**

## MOTION OF APPELLEE NEW JERSEY STATE BOARD OF EDUCATION TO DISMISS OR AFFIRM

The appellee New Jersey State Board of Education respectfully moves pursuant to Rule 16(1)(b) and (d) to dismiss this appeal or affirm the judgment of the Appellate Division, Superior Court of New Jersey, on the ground that the appellant received the relief she sought based on state statutory grounds, that the matter is now moot, that the constitutional questions presented are so insubstantial as to obviate the need for further review and that they were not properly raised and expressly passed on below, and also because the case does not raise any issue of special importance, does not conflict with federal precedent, and was correctly decided below.

## COUNTER-STATEMENT OF THE CASE

This appeal seeks review of a decision of the Appellate Division, Superior Court of New Jersey, holding that the issues raised before it concerning a parent's right to have her child excused from a drug education course were moot because the Legislature had repealed the requirements for that particular drug education course. A review of the procedural history is important to show why an appeal to this Court is inappropriate. Further, it will also demonstrate that the appellant has essentially been granted on state statutory grounds the relief she sought when she initiated this matter, so that this appeal is now frivolous.

The facts of this matter are not controverted. The matter arose when S.T. sent a note dated September 16, 1985 to the principal of the Millville Senior High School, Warren Elliott, requesting that her daughter, N.T., be immediately withdrawn from a drug education course, alleging that the course conflicted with her principles. The drug education course from which she sought to have her daughter excused was then part of a state mandated health course that was required for all secondary school students pursuant to *N.J.S.A.* 18A:4-28.7. S.T. subsequently sent further requests that her child be excused from the drug education program. In response, the principal advised the parent that he had to be certain that her request was reasonable and within administrative policies. He also requested that she provide a written analysis of her specific objections to the drug education program.

On October 16, 1985, the principal advised S.T. that her daughter would remain in the class until there was a judicial determination as to her rights. S.T. thereupon

filed a petition with the Commissioner of Education (Commissioner) pursuant to *N.J.S.A.* 18A:6-9, requesting a declaratory judgment that N.T. could be excused from the drug education portion of the health curriculum. Additionally, she sought a stay of the Millville Board of Education's (Board) refusal to excuse her daughter from its drug education class.

In his Initial Decision after a hearing in this matter pursuant to *N.J.S.A.* 52:14F-1 *et seq.*, the Administrative Law Judge (ALJ) initially noted that *N.J.S.A.* 18A:4-28.7, then in effect, required that each secondary school provide in its health education curriculum a minimum of 10 hours of drug education. The ALJ then reviewed the legislative history of *N.J.S.A.* 18A:35-4.6 *et seq.*, known as the "Parents Rights to Conscience Act of 1979." *N.J.S.A.* 18A:35-4.7 provides:

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

The ALJ observed that the committee's statement to the act indicated that the Senate Law, Public Safety & Defense Committee had amended it to eliminate drug education from the list of courses from which children could be excused. Accordingly, the ALJ concluded that *N.J.S.A.* 18A:35-4.6 was inapplicable to warrant an excusal from any portion of the Board's drug education program mandated by *N.J.S.A.* 18A:4-28.7. As a result, N.T. was com-

pelled to attend the classes her mother deemed objectionable. The Commissioner accepted the findings and conclusions of the Initial Decision.

The matter was then appealed to the New Jersey State Board of Education (State Board), the highest level of appeal in the administrative forum. The State Board reversed the conclusions of the Commissioner. It noted that *N.J.S.A.* 18A:35-4.7, the excusal statute, applies to any portion of a health curriculum. *N.J.S.A.* 18A:4-28.7, which mandates that each district provide a drug education program, requires that the program be incorporated into the district's health education curriculum. The State Board therefore reasoned that, because the excusal provided in the statute included any part of the instruction in health, the Board's drug education program taught as part of its health curriculum was encompassed in the excusal statute. The State Board further noted that the language of *N.J.S.A.* 18A:35-4.7 permitting excusal from health was clear on its face; therefore, it was unnecessary to consider the legislative history of the statute. It concluded that the Board must excuse N.T. without penalty.

The State Board, moreover, agreed with the Commissioner that, as an administrative agency, it did not have jurisdiction to decide the constitutional issues raised by S.T. It pointed out, however, that it was unnecessary to consider the constitutional issues in light of its determination that S.T. had a statutory basis to have her daughter excused from the course. It must be strongly emphasized here, that, at the highest administrative level, S.T. was granted what she had sought, to wit, the excusal of her daughter from the drug education course.

The Board then filed a notice of appeal of the State Board's decision with the Superior Court of New Jersey, Appellate Division, on or about January 12, 1987. Notice must be taken, however, that S.T. never appealed to the Appellate Division from the State Board's failure to decide the constitutional issues she had raised at the administrative level. Nor did she appeal any alleged failing grade.

While this matter was on appeal, the Legislature, reflecting its concern with the problems of drugs in New Jersey, enacted *L.* 1987, *c.* 389, effective January 13, 1988. This statute, *N.J.S.A.* 18A:40A-1 *et seq.*, addresses the problems of substance abuse. One portion of the new law established a drug education program requiring that information on the nature of drugs, alcohol, and controlled dangerous substances be taught in each public school to students from kindergarten through twelfth grade, according to curriculum guidelines to be established by the Commissioner. *L.* 1987, *c.* 389 also repealed *N.J.S.A.* 18A:4-28.7, which mandated drug education as part of the health curriculum. It was from that course mandated under the repealed statute that S.T. had sought to have her daughter excused.

The Appellate Division decision in this matter came after the enactment of the new drug education statute and the repeal of *N.J.S.A.* 18A:4-28.7. In its decision the Court noted that the State Board opinion was predicated on a facial interpretation of *N.J.S.A.* 18A:4-28.7 and *N.J.S.A.* 18A:35-4.5. Additionally, it noted that N.T. had not been enrolled in the Millville School for several years, having

completed her education in private school. The Court therefore held that because the Legislature had repealed *N.J.S.A.* 18A:4-28.7, which mandated the course from which S.T. was seeking the excusal of her daughter, and since N.T. was no longer enrolled in public school, the matter was moot both as to N.T. personally and prospectively.

Thereafter, on July 7, 1988, S.T. filed a petition for certification with the New Jersey Supreme Court, alleging that the Appellate Division had erred when it failed to consider S.T.'s First Amendment rights. The petition for certification was denied on December 21, 1988. On March 20, 1989, S.T. filed a Notice of Appeal with this Court pursuant to 28 *U.S.C.* § 1257(2). Subsequently, she filed a Jurisdictional Statement with this Court, but the Jurisdictional Statement was returned to her to correct deficiencies in it. A corrected Jurisdictional Statement was then filed on or about April 13, 1989 but was again returned to the appellant to further correct deficiencies. The Jurisdictional Statement was finally accepted by this Court and this motion on behalf of the State Board followed.

———o———

## ARGUMENT

**The Question Presented By The Appellant, Whether The Mandating Of Her Daughter Into A Drug Education Program Violated Her First Amendment Rights, Was Never Considered By The Courts Below And Need Not Be Reached Here Because The Appellant Received The Relief She Sought Based On State Statutory Grounds; Moreover, The Appellate Division's Judgment Correctly Determined That The Appeal Was Moot, As The Statute Mandating The Course At Issue Had Been Repealed.**

Although the appellant raises the question whether the mandating of her daughter into a drug education program over her parent's objection for reasons of conscience violated her First Amendment rights, it is plain that the appellant does not comprehend the standards this court has established to hear cases from state courts. This is a frivolous appeal because S.T. essentially received the relief she was seeking when she initiated this matter, to wit, the right to have her daughter excused from a drug education program, but that excusal was based on her rights pursuant to state statutory grounds, the Parents Rights To Conscience Act, *N.J.S.A.* 18A:35-7.4. Notwithstanding that she gained an administrative decision establishing a parent's right to remove a pupil from a drug education course incorporated in the health curriculum, it appears that S.T. has appealed to this court only because she prefers to have her victory predicated on constitutional grounds. Moreover, she appears also not to understand that this matter is moot because the Legislature repealed the compulsory course from which S.T. was seeking to have

her daughter excused and because N.T. is no longer enrolled in the public schools of the State of New Jersey. As a result, the circumstances which gave rise to the instant matter are not capable of repetition.

**A. The administrative agency acknowledged that S.T. had a state statutory right to have her daughter excused from the objectionable course and the Appellate Division concluded that any further appeal by the Board was made moot by the repeal of the statute at issue requiring her to be in that course; both determinations constitute adequate non-federal grounds, so that there is no need to decide the constitutional issue.**

Pursuant to Rule 16.1(b), this Court will not review a decision from a state court if there are adequate non-federal grounds to support the decision. The State Board avers that there are substantial state grounds supporting the Appellate Division's decision, so that there is no need for this Court to consider the constitutional claims. Moreover, S.T. was granted the relief she sought based on statutory grounds, so that there is no need to reach the federal question.

It is necessary to recall here that the decision of the State Board accorded S.T. the right to have her daughter excused from drug education. This decision was predicated not on her constitutional claims but on statutory interpretation. The State Board determined that the interplay of *N.J.S.A.* 18A:35-4.7 and 18A:4-28.7 operated to create a right of excusal for any parent who wished to have a child removed from that portion of the health curriculum which concerned drug education.

Initially, it is important to note that S.T. has no basis for even appealing to this Court. An appeal brings up for review only that which was decided adversely to the appellant. *Loudon v. Taxing District of Shelby County,* 104 *U.S.* 771 (1880). In this matter, the administrative decision favored S.T. The State Board determined that a parent has a right of excusal from the course dictated by *N.J.S.A.* 18A:4-28.7. Secondly, that decision favorable to S.T. was arrived at without need to consider her constitutional claims, and is entirely supportable as comprising adequate State grounds. Because there is another distinct ground on which the judgment below can be sustained, this court will not review the state judgment at issue. *McQuaid v. Trenton,* 172 *U.S.* 636 (1898).

The twist in this appeal is that, after the State Board concluded that N.T. could be excused from the course, the Appellate Division refused to consider the matter any further. The Appellate Division in its opinion determined that the Board's appeal of the State Board's decision regarding *N.J.S.A.* 18A:35-4.7 was moot. It indicated that it was privately moot, as N.T. was no longer a public school student, having completed her education in private school. *See Doremus v. Board of Education,* 342 *U.S.* 429 (1951), (in which the Supreme Court refused to hear a constitutional challenge to Bible reading in public schools where the child had graduated from the public schools before the appeal was taken). It further noted that the matter was prospectively moot as the result of the repeal of the statute, so that it would be unnecessary for the Appellate Division to provide guidance to the public. The same logic applies in this matter. The Court should not squander its

scarce resources deciding a matter which would not give guidance to the public. This Court does not render opinions on moot questions. *American Book Co. v. Kansas,* 193 *U.S.* 49 (1903). It cannot be disputed that mootness as a result of the repeal of the relevant statute is grounds for denying jurisdiction. *Board of Flour Inspectors v. Glover,* 160 *U.S.* 170 (1895). Moreover, this Court will not decide a constitutional question if there is a non-constitutional basis for its decision, *Rogers v. Jones,* 214 *U.S.* 196 (1908), which is the situation herein.

**B. The issue of whether a mandated drug education course violates First Amendment rights was not raised before the Appellate Division, whose decision is at issue herein, nor did any court ever pass on the question.**

This Court should not decide an issue which was not properly raised and expressly passed on below. Rule 16.1 (b). A decision in the state court which involved no question of federal law is not reviewable by this Court. *Santa Cruz County v. Santa Cruz R. Co.,* 111 *U.S.* 361 (1883). Because S.T. failed to properly raise before the Appellate Division the question of whether mandatory drug education violated her constitutional rights, this Court should not now reach out to decide the issue.

In order to comprehend the State Board's position that S.T. did not properly raise below the issue of her constitutional rights, it is necessary to review briefly the procedural history of the matter. In her petition initiating this matter, S.T. did indeed allege that the requirement of drug education violated her constitutional rights. The ALJ, the Commissioner, and the State Board, however, all

refused to decide that issue, noting instead that administrative agencies in New Jersey do not have jurisdiction to decide constitutional issues. *Paterson Redevelopment Agency v. Schulman,* 78 *N.J.* 378 (1979). Nonetheless, the State Board did accord S.T. the relief she sought. It agreed with her contention that a statute, *N.J.S.A.* 18A:35-4.7, provided her the right to have her daughter excused from that portion of the health course to which she objected.

The Board in turn appealed the State Board's decision to the Appellate Division, alleging that the term "health" as used in *N.J.S.A.* 18A:35-4.7 did not encompass the term "drug education." It must be emphasized here, however, that S.T. never cross-appealed to the Appellate Division to raise the fact that the administrative decision below had not decided her constitutional claims. Nor did she appeal the alleged failing grade she now refers to, but which has no basis in the record. Accordingly, at the Appellate Division level, she was apparently content to accept her victory predicated on statutory interpretation and not pursue her constitutional claims. Thus, the Appellate Division properly could not and did not review her First Amendment allegations.

While it is true that S.T. did note in the appeal her contention that the drug statute violated her First Amendment rights, that position was set forth only as part of her response to the Board's appeal brief filed with the Appellate Division. It was not, as noted *supra,* specifically raised as an appeal of the administrative decision. Clearly then, the Appellate Division had no duty to pass on constitutional claims not properly appealed to it. S.T. then petitioned the New Jersey Supreme Court for certification, raising for the first time in a court of competent jurisdiction her con-

stitutional claim. The Supreme Court denied the petition for certification. Accordingly, neither the Appellate Division nor the Supreme Court ever reviewed her constitutional claim and expressly passed on its validity. As the federal question was not expressly passed on by the state courts, Rule 16.1(b), it is not now justiciable. *Ferry v. King County,* 141 *U.S.* 668 (1891). Since the First Amendment issue was never considered by the courts below, it is respectfully submitted that this Court should not hear the issue.

**C. The appellant erred when she filed this appeal pursuant to 28 U.S.C. § 1257(2) because she never challenged the constitutionality of a statute, nor did the court below uphold a state statute in the face of a constitutional challenge when it declared this matter moot because the statute at issue had been repealed.**

S.T. has asked this Court to consider this matter pursuant to its authority under 28 *U.S.C.* § 1257(2). That statute, however, authorizes appeals if the validity of a statute has been challenged as repugnant to the Constitution and the decision of the State Court is in favor of its validity. S.T., however, never challenged any statute as being unconstitutional. She asked rather for an excusal for her daughter from the mandated drug education course. She was therefore acknowledging the constitutional right of the Legislature to compel drug education for New Jersey public school pupils. Because no challenge to the constitutionality of a state statute was ever mounted, appeal to this Court pursuant to 28 *U.S.C.* § 1257(2) is inappropriate. *Addington v. Texas,* 441 *U.S.* 418 (1979). Moreover, in this matter, the Appellate Division, New

Jersey Superior Court, the highest state court to have considered the compulsory drug education statute at issue, never upheld its validity. Rather, the court declared the matter moot, since the statute giving rise to this appeal, *N.J.S.A.* 18A:4-28.7, which mandated drug education in the health curriculum, had been repealed. Accordingly, the instant matter does not fit into the clearly circumscribed conditions necessary for an appeal pursuant to 28 *U.S.C.* § 1257(2).

Further, S.T. failed to provide this Court with reasons why this matter should alternatively be considered as a petition for *certiorari.* She has not set forth for this Court how her case meets the standards for *certiorari* established in Rule 17.1(a), (b) and (c).

Given that S.T. was accorded the remedy she sought based on a statutory right and that no other students will be similarly affected by the course at issue, there is no substantial federal question involved regarding her constitutional rights. Accordingly, it is respectfully submitted that this Court should not use its discretionary jurisdiction in a way which would in essence be an exercise in futility.

**D. S.T. is asking this court to decide a matter which is not a controversy because no one as yet has sought to be excused from the mandates of N.J.S.A. 18A:40A-1 et seq.**

As support for her appeal, S.T. contends that *N.J.S.A.* 18A:40A-1 *et seq.,* the current drug education course, also conflicts with the First Amendment by mandating drug education courses for children whose parents oppose them. But the validity of *N.J.S.A.* 18A:40A-1 *et seq.* is not at issue herein. No one has challenged the statute nor sought

excusal from its requirements, so that the matter has never been considered by the New Jersey courts. In essence, S.T. is seeking review of the statute in a vacuum. This Court, however, decides only actual controversies. *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 *U.S.* 498 (1910). Until parents seek to have their children removed from the new course, the issue of whether it conflicts with the First Amendment may not be brought before this Court.

In sum, based on state statutory grounds, S.T. was granted the right to have her daughter excused from the drug education portion of the health curriculum. She did not appeal the rationale for the decision to the Appellate Division. When the school board sought to appeal that administrative agency determination, the Appellate Division properly determined that the matter before it was moot in that the specific drug education requirement giving rise to this appeal had been repealed. Thus, plainly, there are adequate nonfederal grounds for the decision below; the First Amendment claim raised by the appellant does not warrant review by this Court.

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## CONCLUSION

It is respectfully submitted that for the foregoing reasons, the appeal should be dismissed or the judgment of the Appellate Division, Superior Court of New Jersey affirmed because the matter was decided below on state statutory grounds, the matter is now moot, the constitutional questions presented are so insubstantial as not to require further review, nor were they properly raised and expressly passed on below, and also because the case does not raise any issues of special importance, does not conflict with federal precedent, and was correctly decided below.

Respectfully submitted,

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DATED: May 25, 1989

## APPENDIX

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| S.T., on behalf of her minor child, N.T., | ) | |
| Petitioner-Appellant, | ) | |
| V. | ) | STATE BOARD OF EDUCATION |
| BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL, Respondents-Respondents. | ) | DECISION |

Decided by the Commissioner of Education, February 25, 1986

For the Petitioner-Appellant, Joseph F. Shanahan, Esq.

For the Respondents-Respondents, Jacob and Robinson (Frederick A. Jacob, Esq., of Counsel)

This case involves the issue of whether the Parents Rights to Conscience Act of 1979, *N.J.S.A.* 18A:35-4.6 *et seq.*, applies to a district board's drug education course mandated by *N.J.S.A.* 18A:4-28.7 so as to require a student's excusal from the course where the parent presents that the course conflicts with his conscience or sincerely held moral or religious beliefs. The Petitioner in this case is the mother of a high school student, who requested of the Principal that her daughter be immediately withdrawn from the drug education course[1] because

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[1] Petitioner also requested withdrawal from psychology. However, attendance at that course is not at issue in this case.

> . . . research has shown that these courses are permeated with the philosophy of secular humanism which is diametrically (sic) opposed to the Judeo-Christian principles to which we ascribe. . .

A-1.

Petitioner supplemented this request with a letter reiterating her concern that her ". . . constitutional right to free exercise of [her] religion is being offended by forcing [her] daughter to take a course which teaches what we believe to be sinful." A-2. This letter was followed by a form letter again expressing Petitioner's objection that drug education violated her religious and moral beliefs. A-3.

The Principal declined to excuse Petitioner's daughter from the course, observing that Petitioner had refused to follow the Board's procedures by providing an outline of those sections of the text and/or the drug education curriculum to which she objected and the reasons why those sections were objectionable. On October 18, 1985, the County Superintendent responded to Petitioner's request by setting forth the statutory provisions applicable to the situation. Petitioner then filed a Petition for Declaratory Judgment with the Commissioner of Education.

The matter was transmitted to the Office of Administrative Law as a contested case. Before the pre-hearing conference was held, the parties entered a consent agreement whereby Petitioner's daughter would be excused from the second semester of drug education if the Commissioner had not rendered his decision when the semester started.

The Administrative Law Judge (ALJ) then considered the merits of the case. In his Initial Decision, he

found that when the Legislature mandated that each school district incorporate into its health program the recommended drug education unit for a minimum of ten hours per school year, it made no provision to excuse pupils from the program. He further concluded that *N.J.S.A.* 18A:35-4.7, which provides for pupil excusal from certain instruction and which had been enacted ten years after drug education was mandated by the Legislature, did not apply to the drug education course. In reaching this conclusion, the ALJ relied on the Senate Committee's Statement, which stated that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. Although expressing no opinion concerning whether Petitioner's rights to religious expression under the United States Constitution had been violated, the ALJ declared that the Board was under a duty to provide a minimum of ten hours of drug education a year to its students as part of the health curriculum, and that all of those students are required without exception to successfully complete a minimum of ten hours of instruction in drug education.

The Commissioner concurred with the ALJ's determination that *N.J.S.A.* 18A:35-4.7 is inapplicable to the drug education course mandated by *N.J.S.A.* 18A:4-28.7. Although he agreed with Petitioner that, since it is part of the health program, drug education would appear to be one of the portions of the program from which students could be excused pursuant to *N.J.S.A.* 18A:35-4.7, the Commissioner, like the ALJ, relied on the Senate Committee's Statement to conclude that the Legislature did not intend that the Parents Rights to Conscience Act of 1979 apply

to the drug education course. In reaching this conclusion, the Commissioner placed further reliance on the Committee Statement accompanying amendment to *N.J.S.A.* 18A: 35-4 (amended 1980), which mandated the Commissioner to update curriculum in the area of drugs and alcohol. That Statement, which was approved by the Legislature, *see N.J.S.A.* 18A:35-4, emphasized that effective instructional programs on the use of alcoholic beverages are essential to the development of responsible attitudes and habits in the use of such beverages. Based on the two Committee Statements, the Commissioner concluded that the Legislature fully intended that children in the public schools shall be provided a course in drug education without excusal.

Like the ALJ, the Commissioner declined to resolve the constitutional claim involved in this case, determining that he did not have the authority to decide the constitutionality of a statute. He, however, found that the courts' holding in *Smith v. Ricci,* 89 *N.J.* 514 (1982), was inapposite in resolving such claims since, in contrast to sex education and family life, the Legislature had stated that excusal from drug education is not available.

In sum, the Commissioner found that the Board was under a duty to provide ten hours of drug education per year and that pupil excusal pursuant to *N.J.S.A.* 18A:35-4.7 was inapplicable to the drug education course. He therefore directed that all students subject to *N..S.A.* 18A:4-28.7 be required without exception to successfully complete a minimum of ten clock hours of instruction in drug education. For the reasons that follow, we reverse the Commissioner's decision.

The threshold question in this case is whether *N.J.S.A.* 18A:35-4.7 is applicable to the District's drug education course, which is mandated by *N.J.S.A.* 18A:4-28.7. *N.J.S.A.* 18A:35-4.7, which is part of the Parents Rights to Conscience Act of 1979, provides that

> Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from the portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.

Thus, the words of the statute mandate that, upon presentation of a signed statement that any part of the instructions in *health,* family life or sex education conflicts with a parent's conscience or beliefs, the student must be excused from that part of the course without penalty.

In turn, *N.J.S.A.* 18A:4-28.7 mandates that each district having secondary school grades must incorporate into its *health* education curriculum the recommended drug education unit for a minimum of ten hours per school year as part of the ongoing *health* education curriculum for secondary school grades.[2] Thus, the words of the statute

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[2] The recommended unit includes the following components: information about chemical substances, skill development aimed at establishing personal priorities, promotion of personal identity, coping skills, attitudes and values that influence a student's decisions about a choice of behavior, interpersonal skills, alternative activities, group skills and a healthy school climate. NEW JERSEY DEPARTMENT OF EDUCATION, DESK REFERENCE MANUAL OF STUDENT DRUG AND ALCOHOL USE: A COMPREHENSIVE PLANNING GUIDE (1985).

mandate that the drug education unit be included as part of every district's instruction in health, and preclude offering the unit as part of any other area of instruction. Further, although mandating that every district provide drug education, the words of the statute do not require that every student without exception complete the unit.

It is well established the meaning of a statute first must be sought in the language of the statute. *Sheeran v. Nationwide Mut. Ins. Co., Inc.*, 80 *N.J.* 548 (1979). If the language of a statute is clear and unambiguous on its face, we may not go beyond the words of the statute in order to devine the Legislature's intent. *State v. Butler*, 89 *N.J.* 220 (1982). In such cases, the language of the statute is the full expression of what the Legislature intended, and, although legislative history may be utilized to provide reassuring confirmation of literally apparent meaning, *e.g., Gauntt v. City of Bridgeton*, 194 *N.J. Super.* 468 (App. Div. 1984), extrinsic materials may not be used to create ambiguity or to determine that the Legislature intended something other than that which it actually expressed. *Safeway Trails, Inc. v. Furman*, 41 *N.J.* 467 (1964), *appeal dismissed and cert. denied*, 379 *U.S.* 14; *Gauntt v. City of Bridgeton, supra.* We find that the words of the statutes involved here are clear and unambiguous, and that application of the language of each neither results in conflict between them nor leads to absurd or anomalous results. *Robson v. Rodriguez*, 26 *N.J.* 517 (1958).

On its face, *N.J.S.A.* 18A:35-4.7 mandates excusal as specified in the statute from *any part* of the instruction in *health*, and there is no provision in the statute exempt-

ing any part of the health curriculum from the terms of the statute. As stated, *N.J.S.A.* 18A:4-28.7 clearly mandates that the drug education unit be as part of the health education curriculum. Thus, the language of *N.J.S.A.* 18A:35-4.7 would require excusal from the drug education unit mandated by *N.J.S.A.* 18A:4-28.7 under the conditions prescribed by *N.J.S.A.* 18A:35-4.7 if no exception was made for drug education. Our review of the statutory language fails to reveal such exception. As stated, *N.J.S.A.* 18A:4-28.7 mandates only that each district provide the drug education unit, but does not require that each student complete the unit.

Nor does consideration of the legislatve history of the applicable statutes alter our conclusion that *N.J.S.A.* 18A:35-4.7 requires excusal of a student from the drug education part of the health curriculum where the parent presents that this part of the instruction in health conflicts with his conscience or sincerely held moral or religious beliefs. The Committee Statement that accompanied the bill that was enacted as *N.J.S.A.* 18A:35-4.7 stated that the Committee had amended the bill to eliminate drug education from the list of courses from which children could be excused. However, since *N.J.S.A.* 18A:4-28.7 mandates that the drug education unit be incorporated as part of every district's health curriculum and since instruction in health was specified as subject to excusal by *N.J.S.A.* 18A:35-4.7, it was not necessary that the Legislature specifically list the drug education unit in the statute in order for that statute to apply to drug education. We therefore cannot read the Committee's Statement to eliminate drug education from the courses specifically listed in the statute as an

unambiguous statement that it intended to exempt drug education from the *N.J.S.A.* 18A:35-4.7.

Nor does the Committee Statement accompanying amendment to *N.J.S.A.* 18A:35-4 (amended 1980) conflict with the application of *N.J.S.A.* 18A:35-4.7 to drug education. As set forth above, that statement emphasizes the importance of effective instructional programs on the use of alcoholic beverages to the development of responsible habits and attitudes in the use of such beverages. Although the State Board shares the Legislature's view concerning the importance of instructional programs on alcoholic beverages, and endorses the Legislature's commitment, as expressed in *N.J.S.A.* 18A:4-28.7, to insure the provision of similar instructional programs on drugs, we cannot construe either the Committee Statement accompanying amendment to *N.J.S.A.* 18A:35-4 or the statutes mandating that each district provide instruction on these subjects as a clear expression that, despite the words of *N.J.S.A.* 18A:35-4.7, the Legislature intended to exempt drug education from the application of that statute. In the absence of clear and unambiguous indication that the Legislature intended to exempt the drug education unit from excusal pursuant to *N.J.S.A.* 18A:35-4.7, we may not legislate such exception. *c.f., Department of Environmental Protection v. Franklin Tp.,* 181 *N.J. Super.* 309 (Tax Ct. 1981).

As set forth above, we conclude that the language of *N.J.S.A.* 18A:35-4.7 requires that upon presentation of a signed statement by the parent or guardian of a student that the part of the instruction in health designated as drug education conflicts with his conscience or sincerely held

moral or religious beliefs, the student must be excused from that instruction without penalty. Petitioner's request for the excusal of her daughter from drug education meets the requirements of *N.J.S.A.* 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug education part of its health curriculum without penalty.

In so finding, we emphasize that the State Board is committed to fulfilling the mandate of *N.J.S.A.* 18A:4-28.7, and strongly holds that participation in the mandated instruction on the subject of drugs and their abuse is essential in order that each student may develop the ability to avoid drug abuse. However, we reiterate that we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of the statute. *e.g., Guantt v. City of Bridgeton, supra.* We further emphasize that our application of *N.J.S.A.* 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant the statute.

Finally, we, like the Commissioner, emphasize that we do not have jurisdiction to determine the constitutional claim made by Petitioner. *Reed by Through Reed v. Attorney General,* 195 *N.J. Super.* 172 (App. Div. 1984); *Paterson Redevelopment Agency v. Schulman,* 78 *N.J.* 378 (1879). However, in light of our conclusion concerning the applicability of *N.J.S.A.* 18A:35-4.7 to drug education as mandated by *N.J.S.A.* 18A:4-28.7, we need not consider the question of whether Petitioner's right to the free exercise of religion under the United States Constitution would

be violated had the Legislature required that all students in the public schools complete the mandated drug education unit without exception.

For the reasons set forth above, we reverse the Commissioner's decision. In doing so, we find that oral argument is not necessary in order for us to arrive at a fair resolution of this case and, therefore, deny the Board's motion for oral argument, which it filed after it submitted its exceptions to our Legal Committee's Report in this matter.

Alice Holzapfel opposed.

Attorney exceptions are noted.

December 3, 1986

Date of Mailing Dec. 5, 1986.